

1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
2 FOR MONTGOMERY COUNTY
3
4

5 -----X
6 : Case No. G-892
7 :
8 :
9 :
10 -----X

11 A hearing in the above-entitled matter was held on
12 June 6, 2011, commencing at 9:39 a.m., at the Council Office
13 Building, Davidson Memorial Hearing Room, 2nd Floor, 100
14 Maryland Avenue, Rockville, Maryland 20850 before:

15 Lynn A. Robeson, Hearing Examiner
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Robert Harris, Esq.
Holland & Knight
3 Bethesda Metro Center, Suite 800
Bethesda, Maryland 20814

ON BEHALF OF THE OPPOSITION:

Dave Brown, Esq.
Knopf & Brown
401 East Jefferson Street, Suite 206
Rockville, MD 20850

Page

WITNESSES:

Miguel Iraola
Expert in Land Planning
Hord Coplan Macht
750 East Pratt Street, Suite 1100
Baltimore, Maryland 21202

7/68/84

Tom Slagle
Neighbor in Support
2 Springvale Lane
Silver Spring, Maryland 20910

94/95

Mark Posner
Neighbor in Support
709 Woodside Parkway
Silver Spring, Maryland 20910

97/104

Wardell Townsend
Neighbor in Support
8908 Ellsworth Court
Silver Spring, Maryland 20910

105/107

Anne Spielberg
Community Opposition Representative
606 Greenbrier Drive
Silver Spring, Maryland 20910

109/128/164/167

Jim Eisenmann
Neighbor in Opposition
8611 Springvale Road
Silver Spring, Maryland 20910

169/176/183

John Millson
Neighbor in Opposition
8603 Springvale Road
Silver Spring, Maryland 20910

185/202/213

Tom Armstrong
Neighbor in Opposition
606 Greenbrier Drive

216/221

Silver Spring, Maryland 20910

A P P E A R A N C E S (Continued)

Page

WITNESSES:

Ivaylo Gachev
Neighbor in Opposition
8504 Springvale Road
Silver Spring, Maryland 20910

225/241

Jim Humphrey
Neighbor in Opposition
5104 Elm Street
Bethesda, Maryland 20814

258/268/277

Jonathan Jay
Neighbor in Opposition
606 Woodside Parkway
Silver Spring, Maryland 20910

280/292/303/307

ALSO PRESENT:

Vicki Warren
Susan Volk
Maria Schmit
Michael Gurwitz

E X H I B I T S

Marked Received

Exhibit No. 139	North and West Silver Spring Master Plan	6	--
Exhibit No. 140	Preliminary Plan Approval for Chelsea School	14	14
Exhibit No. 141	Subdivision Notes	16	--
Exhibit No. 142	Owner's Certificate	16	--
Exhibit No. 143	Good Counsel Decision, Case G-798	37	--
Exhibit No. 144	Oxbridge Decision, Case G-822	41	--
Exhibit No. 145	Katz Decision, Case G-858	43	--
Exhibit No. 146	Woodside Decision, Case G-817	45	--
Exhibit No. 147	Statute	47	--
Exhibit No. 148	Section 59-C-1.61, Cluster Zones	50	50
Exhibit No. 149	Speculative Plan by Mr. Brown	53	--
Exhibit No. 150A	CV of Cinzia Cirillo	67	--
Exhibit No. 150B	Testimony of Cinzia Cirillo	67	--
Exhibit No. 151	Aerial of Surrounding Area	117	117
Exhibit No. 152	Handwritten Townhouse Plan by Mr. Harris	146	--
Exhibit No. 153	Trip Generation Formulas	188	--
Exhibit No. 153A	Trip Generation Formulas, Small Version	188	--
Exhibit No. 154	Traffic Plan	195	--

Exhibit No. 155	Traffic Filtering Around Chelsea School	200	--
-----------------	--	-----	----

E X H I B I T S (Continued)

		<u>Marked</u>	<u>Received</u>
Exhibit No. 156	Millson Testimony	210	--
Exhibit No. 157	Petition	221	--
Exhibit No. 158	Slide Presentation	226	--
Exhibit No. 159	Humphrey Testimony	259	--
Exhibit No. 160	Purple Line Functional Master Plan	292	--
Exhibit No. 161	Silver Spring CBD Sector Plan	292	--

1

P R O C E E D I N G S

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

MS. ROBESON: This is a continuance of a public hearing in the matter of Local Map Amendment G-892, an application for a local map amendment filed by the Chelsea Residential Associates, LLC. The applicant is requesting a re-zoning of property from the R-60 Zone to the RT-15 Zone for property located at 711 Pershing Drive, Silver Spring. The property's legal description is Lot 58, Evanswood, Section 1.

Just before we start into -- well, let me have you identify yourselves for the record, please.

MR. HARRIS: Good morning. For the record, Bob Harris of Holland & Knight representing the applicant.

MR. BROWN: Good morning. Dave Brown from Knopf & Brown representing the Seven Oaks-Evanswood Citizens Association and some of its residents.

MS. ROBESON: Thank you. I just noticed, going through the file after the last hearing, that I have two addresses for this property. One is 630 Ellsworth Avenue and one is 711 Pershing Drive. Do you know which one is the -- you don't have to answer now. I just want to -- the application had 630 Ellsworth Avenue so if we could just clarify that, I think --

MR. HARRIS: I don't know. I think the school

1 goes by 711 Pershing.

2 MS. ROBESON: Oh, okay.

3 MR. HARRIS: But I don't know what the property
4 address is in general, but I can find out --

5 MS. ROBESON: Thank you.

6 MR. HARRIS: -- and we'll clarify that. Thank you
7 for pointing that out.

8 MS. ROBESON: Okay. All right. Are there any
9 preliminary matters before we --

10 MR. HARRIS: Just -- Oh, I'm sorry. Just one
11 small thing. You had asked for a copy of the North and West
12 Silver Spring Master Plan --

13 MS. ROBESON: Thank you.

14 MR. HARRIS: -- and Cindy has gotten one for you.

15 MS. ROBESON: Thank you. I'm going to mark this
16 as exhibit, let's see where we are, Exhibit 139 will be the
17 North and West Silver Spring Master Plan.

18 (Exhibit No. 139 was marked for
19 identification.)

20 MS. ROBESON: Okay. Anything else?

21 MR. HARRIS: That's all I have.

22 MS. ROBESON: Okay. Mr. Brown, do you have
23 anything?

24 MR. BROWN: No, ma'am.

25 MS. ROBESON: Okay. Mr. Harris, I think we are

1 continuing with your witness.

2 MR. HARRIS: Yes, Ms. Robeson. I believe direct
3 examination was completed and Mr. Brown was in the midst of
4 cross-examination of Mr. Iraola.

5 MS. ROBESON: Right.

6 MR. HARRIS: So he's here and ready to go.

7 MS. ROBESON: Okay. Mr. Brown.

8 (Witness previously sworn.)

9 CROSS-EXAMINATION (Continued)

10 BY MR. BROWN:

11 Q Good morning.

12 MS. ROBESON: Did you think of a whole bunch of
13 questions between now and the last hearing?

14 MR. BROWN: Yes, I did.

15 MS. ROBESON: Okay.

16 MR. BROWN: But they will go fast as long as Mr.
17 Iraola agrees with everything I say.

18 MS. ROBESON: Well, I remember, having been an
19 attorney, that I always loved when the other side ended on
20 their direct because then I had a whole weekend to think of
21 everything that I wanted to ask. Okay. Go ahead.

22 BY MR. BROWN:

23 Q Good morning, Mr. Iraola. Did I say that
24 correctly?

25 A Yes. For the record, Miguel Iraola, Hord Coplan

1 Macht.

2 Q Let's start, Mr. Iraola, with a few questions
3 about the special exception that's on the property right
4 now. The Chelsea School on the property is operating under
5 a special exception, right?

6 A That is correct.

7 Q And as part of that special exception, the Board
8 of Appeals made an explicit finding that the school would
9 not be a nuisance if it complied with the traffic plan
10 detailed in its opinion, right?

11 A I did not review the opinion specifically with
12 regards to that.

13 Q Well, would you mind taking a quick look at
14 conclusion of law no. 1 in Exhibit 109?

15 A I'd be more than happy to. Could you repeat that
16 again, the conclusion of law?

17 Q Well, the question was --

18 A Okay.

19 Q -- did they make an explicit finding that the
20 school would not be a nuisance because it has to comply with
21 a traffic plan that was detailed in the opinion?

22 A What number would that be?

23 Q Conclusion of law no. 1.

24 A 1. Yes. I concur.

25 Q Isn't it then correct that the operations of the

1 property are conditioned upon complying with a specific
2 transportation plan mitigating the impact of the traffic and
3 parking conditions at the school?

4 A I don't know. I'm not an expert in transportation
5 with regards to that.

6 Q No. I'm just asking you about what the conditions
7 on the special exception were.

8 A If that's no. 1, correct. It's referring to a
9 transportation plan, yes.

10 Q And would you look at number, at condition no. 5A
11 of the special exception?

12 A Okay.

13 Q It says all bus access and bus parking is to be at
14 the Ellsworth Drive side of the site, correct?

15 A Correct.

16 Q Now, could you put up on the easel your, the
17 exhibit that you prepared, I think you took the photographs,
18 showing buses at the site? I think it's Exhibit 112C.

19 A Do you have the -- we seem to be missing the
20 exhibits.

21 MS. ROBESON: Oh, none of our exhibits, none of
22 the large exhibits are there?

23 THE WITNESS: No.

24 MS. ROBESON: Okay. Let me -- okay. I just got a
25 -- we'll go off the record for three minutes while she

1 locates the exhibits, okay? It will just be three minutes.

2 I'm going to help her.

3 (Whereupon, at 9:46 a.m., a brief recess was
4 taken.)

5 MS. ROBESON: Back on the record. Thank you.

6 Okay. Continue. Why don't you ask the question again, Mr.
7 Brown so --

8 MR. BROWN: All right.

9 BY MR. BROWN:

10 Q Mr. Iraola, looking at Exhibit 112C, there are
11 buses associated with the school photographed in that
12 exhibit, right?

13 A That's correct, yes.

14 Q And you took these photographs?

15 A I did not take these photographs.

16 Q Oh, you did not take these. These buses are not
17 entering the property on Ellsworth Drive, are they?

18 A On Ellsworth Drive. That's -- I don't believe
19 they are.

20 Q The buses are sitting on Springvale Road and on
21 Pershing Drive, right?

22 A That would be, the labels would indicate that,
23 yes.

24 Q Yes. And isn't that in violation of the terms of
25 the special exception?

1 MR. HARRIS: Objection. I don't believe that Mr.
2 Miguel testified as to the conditions of the special
3 exception or anything about it beyond which, the issue of
4 whether Chelsea School was complying with the terms of the
5 special exception was dealt with by the Board of Appeals
6 years ago and I think the question is incorrect and
7 irrelevant.

8 MS. ROBESON: Mr. Brown, do you have a response?

9 MR. BROWN: The applicant put in issue these,
10 brought to the attention of the Hearing Examiner these
11 buses. This is not our exhibit. I'm just asking him about
12 this exhibit in relation to the current legality of the
13 operation of those buses.

14 MR. HARRIS: That's calling for a legal
15 conclusion.

16 MS. ROBESON: I -- well, he did put -- I'm going
17 to overrule the objection. He did, or I think they did put
18 an issue that these buses would be an existing condition and
19 therefore, the property would be, with the townhouses, the
20 community would be better off, so I think I'm going to
21 overrule the objection and let you continue although you
22 know that the special exception is not -- I think Mr.
23 Iraola's testimony is that the community is better off
24 without this institutional use so I do think that
25 questioning on the buses and whether the institutional use

1 is compatible is relevant, but we aren't here to try the
2 special exception itself. So I'll overrule the objection
3 and we'll see how far we go with it.

4 MR. BROWN: I just have a couple more questions
5 about --

6 MS. ROBESON: Okay. That's fine.

7 MR. BROWN: -- the special exception.

8 BY MR. BROWN:

9 Q So you don't know whether or not this is in
10 violation of the special exception?

11 A I do not, no.

12 Q Let me step back for a moment, Mr. Iraola. We
13 kind of glossed over your credentials in stipulating to your
14 expertise but my understanding, correct me if I'm wrong, if
15 it doesn't apply to you, is that a land planner is, in
16 Montgomery County, is expert in looking at the legal
17 constraints in the Zoning Code and applying them to a
18 particular piece of land, see how it can be developed and
19 used. Isn't that right?

20 A Not necessarily.

21 Q That doesn't apply in your case?

22 A Not in my case.

23 Q Are you saying that you are an expert in
24 evaluating how a piece of property can be developed under
25 the Zoning Code?

1 A I would say I'm an expert in that.

2 Q And would you consider yourself an expert in
3 determining whether or not, what are appropriate conditions
4 to be added to a special exception to make it compatible in
5 the neighborhood?

6 A With regard to special exceptions in particular,
7 no.

8 Q The special exception also requires the school,
9 required the school to build sidewalks on Springvale Road,
10 didn't it?

11 A Again, I'm not sure if it did or not in regards to
12 that. If it's a condition, I would agree with you.

13 Q Could you look at page 7 of the decision under
14 access, paragraph 6, 6B?

15 A Okay. Yes.

16 Q What was the requirement with regard to sidewalks
17 along Springvale?

18 A It says should the -- it is requiring that a
19 continuous sidewalk along the entire length of Springvale
20 Drive and should the installation of sidewalks along
21 Springvale Drive require removal of trees, those trees shall
22 be replaced in the same area with trees of similar size.

23 Q All right. Mr. Iraola, I'd like to show you a
24 copy of the Planning Board opinion for Preliminary Plan 1-
25 00013 from August of 2001, and I ask if you've seen that

1 before.

2 A No, I have not.

3 Q Do you recognize this as the Planning Board
4 opinion approving the re-subdivision request for Chelsea
5 School?

6 A Yes.

7 MR. BROWN: I'd like this to be the next numbered
8 exhibit.

9 MS. ROBESON: Any objection, Mr. Harris?

10 MR. HARRIS: No objection.

11 MS. ROBESON: Okay. So this will be 140, will be
12 the preliminary plan opinion for Chelsea School.

13 (Exhibit No. 140 was marked for
14 identification and received into
15 evidence.)

16 BY MR. BROWN:

17 Q Mr. Iraola, in your expertise as a land planner,
18 you recognize that the approval of the subdivision for the
19 Chelsea School is subject to conditions as listed in this
20 opinion, right?

21 A Yes.

22 Q And the first condition is that it's, that under
23 this preliminary plan, the application is limited to a
24 private educational institution with a specified enrollment,
25 correct, and a specified building area, right?

1 A Yes.

2 Q Now, once the property is sold to EYA by the
3 Chelsea School, there will no longer be a private
4 educational institution on the property, right?

5 A That's correct.

6 Q EYA is not planning on operating a school on the
7 property.

8 A Yes. That's correct.

9 Q So the subdivision approval by the Planning Board
10 combining the property, the lots that were, that made up Lot
11 58 will no longer be valid, right?

12 A Say that again. Please repeat the question.

13 Q The subdivision approval that combined the lots,
14 the re-subdivision approval that combined the parcels to
15 make Lot 58, which is what this did, will no longer be
16 valid, right?

17 A No. The lot still is a valid lot. It's gone
18 through record plat. It will be a valid lot.

19 Q Let's take a look at the record plat.

20 MR. BROWN: This record plat was made an exhibit
21 as part of my pre-hearing submission. I'm going to give Mr.
22 Iraola another copy of it just for convenience and another
23 one for you as well.

24 MS. ROBESON: Thank you.

25 BY MR. BROWN:

1 Q This is a little hard to read, Mr. Iraola, so I'm
2 going to give you blowups of a couple of pieces of this
3 record plat as well.

4 MR. BROWN: I don't know that these need to be
5 made exhibits but --

6 MS. ROBESON: Well, let me just locate where, I'm
7 looking for your pre-hearing statement on here. Do you know
8 what exhibit this was, is in the file?

9 MR. BROWN: Just a moment.

10 MR. HARRIS: 42 maybe?

11 MS. ROBESON: Okay.

12 MR. BROWN: 42.

13 MS. ROBESON: All right. Thank you.

14 MR. BROWN: It's part of 42.

15 MS. ROBESON: Thank you.

16 MR. BROWN: For legibility purposes, I've blown up
17 pieces of this plat since I don't have the big plat.

18 MS. ROBESON: Okay. Well, I'm going to mark these
19 as separate exhibits just --

20 MR. BROWN: Fine.

21 MS. ROBESON: -- out of an abundance of caution
22 here. So these will be 141 and 142. 141 will be the one
23 marked subdivision notes and 142 will be the one marked
24 owner's certificate. Just so -- okay.

25 (Exhibits Nos. 141 and 142 were marked

1 for identification.)

2 MS. ROBESON: Go ahead unless there's an
3 objection.

4 BY MR. BROWN:

5 Q Mr. Iraola, on this plat, I think it's 22270, the
6 eighth subdivision note says development is subject to the
7 terms and conditions of preliminary plan 1-00013, correct?

8 A Yes. That's what it says.

9 Q So won't it be necessary for there to be a
10 revision to this plat in order for it to be, legitimately
11 operate as something other than a school?

12 A Yes, sir. It will have to go through re-
13 subdivision.

14 Q All right. Now, I want to point out one other
15 thing on this plat while we're here. I'll come back to this
16 topic a little later. If you look at the owner's
17 certificate, the last sentence on the left-hand side, would
18 you read that aloud, please?

19 A There are no recorded suits, actions --

20 Q I'm sorry. On the left-hand side. The last
21 sentence on the left-hand side.

22 A Oh. Further, we establish the environmental
23 setting easement shown hereon with terms and conditions to
24 be set forth in a document to be recorded hereafter.

25 Q Have you ever seen a recorded environmental

1 setting easement?

2 A Have I ever seen -- yes. I have seen an
3 environmental, a recorded environmental easement.

4 Q For this property?

5 A No. Not for this property.

6 Q Do you know whether or not the, the recordation
7 that was promised in this certificate was ever done?

8 A No, I don't.

9 MR. HARRIS: Objection.

10 BY MR. BROWN:

11 Q Do you know?

12 MR. HARRIS: Objection.

13 MS. ROBESON: Just a minute.

14 MR. HARRIS: Where does it say recordation?

15 MR. BROWN: I'm talking, I'm reading the sentence.
16 It says to be recorded hereafter.

17 MR. HARRIS: Oh, I beg your pardon. I missed
18 that. My apologies. Yes.

19 MS. ROBESON: Okay. Mr. Iraola can answer the
20 question.

21 THE WITNESS: No, I have not.

22 BY MR. BROWN:

23 Q Going back to the subdivision notes, would you
24 read aloud note no. 10?

25 A No. 10, the environmental setting easement shown

1 here and referenced in the owner's certificate hereon shall
2 be established to fulfill the terms and conditions of the
3 Board of Appeals for Montgomery County opinion dated October
4 5th, 2000, Case No. S-2405, Item 3-D-IE-2, renovate and
5 preserve a historic structure at the property known as the
6 Riggs Thompson house to house administrative offices of the
7 school and preserve approximately one acre around the house
8 in its historical and environmental setting. Q Thank
9 you. Now, could we have you bring up for the easel Exhibit
10 30A? This is the latest version of the schematic
11 development plan. I'm sorry. The term is sketch plan, is
12 that right?

13 A Schematic.

14 MR. HARRIS: Schematic.

15 UNIDENTIFIED SPEAKER: You said 130A?

16 MR. BROWN: No, 30A.

17 MS. ROBESON: 30A.

18 BY MR. BROWN:

19 Q This plan does not delineate precisely what the
20 historic setting for the Riggs Thompson house is. I wonder
21 if you could, if you could tell us exactly what it's
22 supposed to be.

23 A What what is supposed to be?

24 Q The environmental setting for the Riggs Thompson
25 house.

1 A It's not delineated on this plan.

2 Q I understand, but could you -- having no other
3 plan showing it, I was wondering if you could use this one
4 to illustrate what it is, or do you have a document that
5 shows what that setting is?

6 A I can show you approximately where, where the
7 setting is.

8 Q Thank you.

9 A Along the southern border property line most
10 adjacent to Pershing Drive would be generally the southern
11 boundary of the historic environmental setting. Along the
12 entire, most of the Pershing Drive frontage up to the
13 intersection with Springvale Road would be kind of the
14 eastern boundary. A small portion of it, as it curves
15 around Springvale Road near the truncation of the street,
16 would be say, the northern boundary, somewhat triangular in
17 shape. And moving south, approximately at some point off
18 the face of the, of the proposed townhomes in a southerly
19 direction would be the western boundary. So approximately
20 within an area that's triangularly shaped.

21 Q And it includes a road running more or less
22 through the middle of that setting, correct?

23 A Yes, it would.

24 Q All right. Could we refer to page 15 of Appendix
25 D of the master plan now?

1 A Okay.

2 Q This shows the proposed environmental setting for
3 the Riggs Thompson house as envisioned in the master plan,
4 doesn't it?

5 A This is part of the technical appendix of the
6 master plan, that is correct.

7 Q The environmental setting description includes the
8 following language. In the event that the Chelsea School
9 plan is not approved, the designated environmental setting
10 is the entire 1.4 acre parcel on which the house is located.
11 Do you see that?

12 A I see where it says that, yes, correct.

13 Q And that's Parcel P-73, correct?

14 A According to this reference it is.

15 Q Yes. And as you can see from this diagram, Parcel
16 P-73, the western boundary more or less coincides with the
17 western boundary of Lot 5 fronting on Cedar Street, right?

18 A Yes. I would agree.

19 Q The western boundary of your proposed
20 environmental setting more or less coincides with the
21 western boundary of Lot 3, doesn't it?

22 A Correct. Between Lot 3 and 4.

23 Q Fairly close to the proposed environmental setting
24 for property while it was used by Chelsea School, correct?

25 A The environmental setting?

1 Q Yes.

2 A That's correct.

3 Q The western boundary.

4 A Um-hum.

5 Q But you're not planning on reverting to the 1.4
6 acres as suggested in the master plan.

7 A The master plan suggests that the environmental
8 setting is 37,056 square feet.

9 Q While it's being used as a school.

10 A That's what it's been established in the master
11 plan, on page 29 of the master plan.

12 Q So would you agree with me that not approving the
13 Chelsea School is more or less equivalent to the Chelsea
14 School leaving the property and having it converted to
15 townhomes?

16 A Not a -- could you clarify your question? Not
17 approved as what?

18 Q Not approved as a special exception.

19 A All right. Could you please repeat your question?

20 Q Well, I'm just trying to get the sense of how this
21 language in the, on page 15 would apply in a situation where
22 after the Chelsea School is approved as a special exception
23 but no longer is going to operate as a special exception,
24 whether it has any force or meaning. The sentence that
25 begins with the words "in the event@.

1 A Well, again, I think I mentioned in my testimony
2 that technical appendices are kind of a slice in time. At
3 the time of the master plan, when the Chelsea School was
4 being reviewed by the Planning staff, they were undergoing
5 work sessions with the Planning Board at the time and it was
6 essentially debated, being debated right and left, so
7 there's multiple versions of what the, what the
8 environmental setting is for the Chelsea School.

9 What made it as a final edit into the master plan
10 is what's on page 29 of the, of the master plan which
11 definitively says is that the environmental setting is
12 37,056. There's no language there that would suggest that
13 it would revert back to a 1.4 in the event of a decision
14 outside the control of the Planning Board.

15 Q And as I understand your testimony, you're doing,
16 that standard maybe a little bit better because you're
17 actually, your position is that the environmental setting
18 that you're proposing is larger than 37 and some thousand
19 square feet, correct?

20 A No. I said -- what I was pointing out was
21 approximately where it would be. It hasn't been --

22 Q Well --

23 A It hasn't been delineated yet.

24 Q Well, that area that you showed me is larger than
25 37,056 square feet, isn't it?

1 A It's -- I would say that 37,056 square feet fits
2 within that defined area that I just described.

3 Q Okay. During your direct examination, Mr. Iraola,
4 Mr. Harris asked you this question. I don't know if you
5 have a copy of the transcript or not. It's on page 226.

6 "So are you saying that the memo implies that it
7 would be okay to have an access road through the
8 environmental setting?@

9 A Which memo are you referring to?

10 Q I'm talking page 226, line 11.

11 A Yes. I --

12 Q I hope we have the same --

13 A No, I do. I believe that the memo referenced is
14 one from Ms. Conlon, to Ms. Conlon from the Historic
15 Preservation Staff at Park and Planning given at DRC.

16 Q I'm just asking, I'm just making reference to the
17 question that you were asked.

18 A I'm trying to make sure that we're talking about
19 the same memo.

20 Q Okay. I'm not talking about a memo. I'm just
21 talking about the question.

22 A Okay.

23 Q All right? So you were asked this question and
24 your answer was this. "That's correct and, you know, just
25 to reference the special exception for the Chelsea School at

1 the time, there was always a street that kind of accessed
2 it.@"

3 I want to ask you about this statement of yours,
4 there was always a street that kind of accessed it. Could
5 you describe the street which you're referring to?

6 A That's -- yes, I will. In the special exception
7 plan, there was a street proposed that essentially aligned
8 with the existing driveway on the, just north of the
9 southern boundary along Pershing Street. It essentially
10 went along the edge of the southern boundary and came to a
11 semi-circular crescent-shaped parking area that looped from
12 one end of Ellsworth to the other. That provided the access
13 for the school.

14 Q Do you know whether or not that driveway was
15 approved by the Historic Preservation Commission?

16 A I do not know.

17 Q Do you know whether it was or is used as a public
18 road?

19 A The new street, the proposed street?

20 Q No. We're talking about this existing, this
21 existing roadway.

22 A There is no existing roadway.

23 Q Well, you said there was always a street that kind
24 of accessed it. I'm talking about that street that you've
25 just been talking about.

1 A Okay. I was referring to the plan, the special
2 exception plan that did illustrate a street that was being
3 proposed as part of the ultimate build-out for the Chelsea
4 School as part of the special exception.

5 Q Was there ever a street on the site that was used
6 as a public road?

7 A Ever? I don't know if there was ever a street.

8 Q I'm talking about since the time it became a
9 special exception.

10 A I don't believe so.

11 Q All right. I'd like to ask you some questions
12 about Exhibit 130. Now, with respect to Exhibit 130 and in
13 particular, Colesville Towers which you show at 220 dwelling
14 units per acre, do you see that on there?

15 A Yes, I do.

16 Q Do you know when the Colesville Towers was built?

17 A Not precisely but I'm, but my guess would be in
18 the '70s sometime.

19 Q It was done before the current master plan was
20 approved in 2000, right?

21 A Yes.

22 Q It was done before the previous master plan was
23 approved in 1978, right?

24 A Probably, yes.

25 Q Are you aware that in the '78 master plan for

1 North Silver Spring, there was an explicit finding that the
2 plan recommendations were directed at strictly limiting
3 development potential in the northern section, thereby
4 encouraging more intense development within the boundaries
5 of the CBD?

6 A No, I did not.

7 Q And did you know that that language was intended
8 to address dense development such as Colesville Towers that
9 came in at an earlier time?

10 A No. I don't know the particulars about the '78
11 plan.

12 Q You worked on the 2000 master plan, right?

13 A Yes, I did.

14 Q And did you come to understand what the purposes
15 and intents and goals of the 1978 plan that you were
16 revising were?

17 A No. I came in towards the tail end of the, of the
18 master plan process when I started at Park and Planning.

19 Q Do you know what, from what street the cars enter
20 Colesville Towers?

21 A Not precisely.

22 Q Let me ask more specifically, is there any
23 entrance to Colesville Towers from Ellsworth?

24 A Yes. I believe there is.

25 Q Okay. How many feet of the Colesville Towers

1 property actually abut the property on which the, abut the
2 subject property?

3 A How many feet?

4 Q Yes.

5 A Of frontage?

6 Q Yes.

7 A I'd have to refer to another document. I'd say
8 approximately 90 feet of frontage.

9 Q Are you measuring the diagonal as well as the
10 perpendicular?

11 A I'm measuring from this point which is the point
12 opposite the corner of the southeastern or western corner,
13 perpendicular from that point across Ellsworth Drive.

14 Q I understand. Now, looking across from Colesville
15 across Ellsworth, there's a triangular piece of property
16 that you've labeled M-NCPPC Park, right?

17 A That's correct.

18 Q What is the zoning on that property?

19 A I believe it's R-60.

20 Q Now, next to Colesville Towers along Ellsworth is
21 the current Silver Spring Library, right?

22 A Yes.

23 Q Pretty much the entire library site is abutting,
24 confronting, is a confronting property, right, to the
25 subject property?

1 A Yes.

2 Q And the zoning on the library is what?

3 A R-60.

4 Q Is it unusual for a public use like a library to
5 be in an R-60 neighborhood?

6 A Public facilities pretty much can be in any,
7 within any zone.

8 Q Well, I'm asking particularly about libraries in
9 residential zones. Is that a highly unusual event?

10 A I wouldn't say it's unusual.

11 Q Now, looking along Cedar Street where you see
12 mixed office and SFD residential --

13 A Yes.

14 Q -- these are all zoned R-60 as well?

15 A Yes, they are with, some with special exception.

16 Q All the structures are single-family detached
17 homes, correct?

18 A They are. Some are nonresident professional
19 offices. Some are homes.

20 Q All right. But they were built as single-family,
21 all of them were built as single-family detached homes.

22 A Yes. They were built as single-family detached
23 homes.

24 Q And it's only four of them that have special
25 exceptions, correct?

1 A Just a second. I've got -- four, correct.

2 Q Moving on around, we have one-family detached
3 residential confronting along Pershing Drive, correct?

4 A Yes. Correct.

5 Q That's all R-60.

6 A Correct.

7 Q None of these properties, confronting properties
8 have special exceptions, do they?

9 A Well, I believe 722 Pershing has a special
10 exception applied to it.

11 Q Do you know what it is?

12 A I have no idea what it is.

13 Q Okay. Just looking a little bit beyond the
14 colored area, the uncolored area to the north to the upper
15 left corner and the uncolored area to the lower right-hand
16 corner, those are all R-60 single-family residential areas,
17 correct?

18 A I believe along Wayne Avenue?

19 Q Yes.

20 A That is correct. On the south side, southeast
21 side of Wayne Avenue. Along Colesville Road, there are some
22 mixed special exceptions. I'm not quite sure what the
23 zoning is on that.

24 Q Now, turning to the Springvale Terrace Retirement
25 Home, that's basically, diagonally abuts the property,

1 right?

2 A Yes.

3 Q All right. Do you know when the Springvale
4 Terrace Retirement Home was built?

5 A Portions of it were built -- no, I don't. No, I
6 don't. Not specifically.

7 Q Do you know whether or not it was built before the
8 current master plan of 2000?

9 A I don't recall.

10 Q So you don't know whether it was built before the
11 1978 master plan either?

12 A I don't know that.

13 Q All right. What is the zoning for the retirement
14 home?

15 A It is R-60.

16 Q Across from the property on the north side, this
17 is across Springvale, there's a row of single-family homes.

18 A Yes. That's correct.

19 Q And they're all zoned R-60 as well.

20 A Yes.

21 Q Any special exceptions among those?

22 A I don't believe so.

23 Q And just to be clear, the boundary between the
24 Central Business District Master Plan and the North Silver
25 Spring Master Plan is Cedar Street, right?

- 1 A Yes. That's correct.
- 2 Q So none of the subject property is fronting on the
3 CBD.
- 4 A That's correct.
- 5 Q Does any part of the property front on a major
6 street?
- 7 A Could you define major street?
- 8 Q Well, how about Colesville and Georgia as major
9 streets.
- 10 A No. No, it doesn't.
- 11 Q Does any part of the property front on an arterial
12 road or any other primary street?
- 13 A No, it doesn't.
- 14 Q Would you describe the block on which the
15 townhomes are to be built as an interior block of the Seven
16 Oaks-Evanswood neighborhood?
- 17 A No, I would not.
- 18 Q It can only be accessed from interior neighborhood
19 streets, right?
- 20 A What can be only accessed from --
- 21 Q The subject property.
- 22 A Yes.
- 23 Q Is there any other property in North Silver Spring
24 zoned for townhouses at a density of RT-15?
- 25 A No.

1 Q Other than along Georgia Avenue, have there been
2 any other townhome developments approved in North Silver
3 Spring since the adoption of the 2000 master plan?

4 A I don't believe there has.

5 Q Are there any other townhouse developments in
6 North Silver Spring that do not sit directly on a major
7 street or on the CBD or directly abutting a building zoned
8 commercial?

9 A I don't believe there is.

10 Q Have you looked at the Forest Conservation Plan
11 for the site?

12 A No, I haven't.

13 Q You don't know how many mature trees are going to
14 come down as a result of the proposed development?

15 A No, I don't.

16 Q At the time that the North and West Silver Spring
17 Master Plan was adopted, the Silver Spring CBD Sector Plan
18 was also being adopted, right?

19 A Approximately about the same time, yes, correct.

20 Q They were effectively prepared concurrently,
21 weren't they?

22 A Yes.

23 Q So at the time this master plan was written, the,
24 it was well understood that there was going to be Metro near
25 the proposed development, right?

1 A Yes.

2 Q There were a lot of specific recommendations in
3 the Silver Spring CBD plan for revitalization to bring the
4 urban nature of that, of the CBD back to life, correct?

5 A Yes. Correct.

6 Q That was the whole focus, wasn't it?

7 A Yes. Absolutely.

8 Q And one of the strategies was to include higher
9 density residential development directly within the CBD.

10 A Yes.

11 Q And one of the mix in housing choices that was
12 targeted for the CBD is townhomes.

13 A I'm not sure if there's a specific reference with
14 regards to that but certainly, housing diversity is
15 certainly targeted.

16 Q Yes. And EYA, in keeping with that plan,
17 developed the Cameron Hill Townhomes in the CBD, right?

18 A Yes. That's correct.

19 Q And wasn't it the plan in the CBD to zone the
20 edges at CBD 0.5 to provide a transition to residential
21 neighborhoods beyond the CBD?

22 A In most cases, yes.

23 Q And indeed, this area where you show 112 dwelling
24 units per acre is in part a fulfillment of that strategy,
25 isn't it?

1 A Yes. That's zoned CBD 0.5.

2 Q I'm trying to recollect, Mr. Iraola, whether or
3 not you talked about this in your direct testimony but just
4 tell me if I'm mistaken. Did you talk about the existence
5 of a proposed purple line station at Wayne and Fenton?

6 A Yes. I believe I made reference to it.

7 Q Did you cite that as a reason to have a higher
8 density at this site?

9 A It certainly adds to the transit orientation of
10 the site in addition to its proximity to Metro.

11 Q Isn't it true that the purple line functional
12 master plan says that it does not address potential changes
13 in land use or zoning?

14 A I don't recall.

15 Q So you don't recall whether that master plan says
16 anything specific about the area around the Wayne Avenue
17 station regarding intent or desire to change the zoning in
18 the residential neighborhoods in the area.

19 A No. I've not studied the functional master plan
20 for the purple line.

21 Q I'm sorry?

22 A I have not studied the functional plan for the
23 purple line.

24 Q Let's go back to Exhibit 30A for just a minute.
25 By my count, Mr. Iraola, 36 of the proposed townhomes will

1 be only 14 or 16 feet wide. Do you agree with that count?

2 A I would agree with it.

3 Q Will some of those narrower townhomes be MPDUs?

4 A Yes. Probably.

5 Q Will you be making those narrower townhomes taller
6 as a result?

7 A No. They would be within the 35-foot maximum
8 height limit that's anticipated in the zone.

9 Q But it might be as many as four stories?

10 A I don't believe so.

11 Q Okay. All right. Turning to page 231 of your
12 testimony, on line 10 you said that institutional uses are
13 frequently found appropriate and approved and used for RT
14 zoning. I'll wait for you to catch up with me.

15 A What line?

16 Q Line 10.

17 A Yes.

18 Q Institutional sites are frequently found
19 appropriate and approved and used for RT zoning.

20 A Yes.

21 Q And then you mentioned three examples.

22 A Yes, I did.

23 Q You didn't say this but I want to ask you anyway.

24 Is it your contention that these examples are, well, is
25 this particular re-zoning a stronger or weaker case for re-

1 zoning than these three examples?

2 A I believe this is a stronger case than these
3 examples.

4 Q Okay. Let's look at a couple of them. The Good
5 Counsel one for starters, G-798.

6 MR. BROWN: What's our next exhibit number?

7 MS. ROBESON: 142, or 143. I'm sorry.

8 (Exhibit No. 143 was marked for
9 identification.)

10 BY MR. BROWN:

11 Q I'm going to show you what's been marked as
12 Exhibit 143, excerpts from the Hearing Examiner's decision
13 in the Good Counsel case.

14 MR. HARRIS: You don't --

15 MS. ROBESON: Any objections?

16 MR. HARRIS: You don't have the entire report?

17 MR. BROWN: I didn't think it was necessary to put
18 the entire point in. I just want to make a couple of points
19 about it. If you want the entire report, I'll put the
20 entire report in.

21 MR. HARRIS: I think it should be. I don't know
22 what's being left out here.

23 MS. ROBESON: I agree. I think that it should be
24 in the record. I'll let this in for the time being because
25 we have --

1 MR. BROWN: I will replace it with the full
2 report.

3 MS. ROBESON: That's fine.

4 MR. BROWN: Okay.

5 BY MR. BROWN:

6 Q On page 3 of the report, you see the sentence
7 toward the bottom that the applicant reached a settlement
8 agreement with the other parties involved that resulted in
9 adding several new binding elements to the proposal.

10 A Yes.

11 Q As a result of this settlement agreement, all
12 opposition parties who were represented by Counsel withdrew
13 their opposition and no opposition appeared at the hearing.
14 Do you see that?

15 A Um-hum. Yes, I do.

16 Q Let's look on page 5. In particular, I draw your
17 attention to the fact that there were six single-family
18 homes across from the property on Amherst Avenue and four
19 single-family homes abutting the property on the north. Do
20 you see those?

21 A Yes.

22 Q Now, over on page 18, this is the final schematic
23 development plan, a photocopy of a piece of the final
24 schematic development plan. Do you see that in fact, this
25 plan included six single-family homes across the street from

1 the single-family homes on Amherst Avenue?

2 A Yes. I see that.

3 Q Do you see also that there's a 50-foot buffer on
4 the north side between the townhomes and the property line
5 to the single-family homes to the north?

6 A Yes, I see that. Well, I don't know about the
7 dimension but I see a buffer there.

8 Q Well, we'll put the full report in and you'll see
9 the dimensions. Do you see also that this is, although this
10 is an R-15 zoned property, page 19, it says toward the
11 bottom, the density is 13.7 and that is, I'm sorry, there's
12 a table showing the density of 13.7 proposed. Do you see
13 that?

14 A Yes, I do.

15 Q That's less density than you're proposing in this
16 project, correct?

17 A Yes, it is.

18 Q And you see also the observation toward the bottom
19 of that page that Technical Staff notes that the proposed
20 density is closer to the maximum density permitted in the
21 RT-12.5 with MPDUs than to the maximum density permitted in
22 the RT-15.

23 A Yes. I see that.

24 Q Let's go to compatibility on page 48. Toward the
25 bottom of the page, the Hearing Examiner notes the mixture

1 of detached single-family homes, townhomes, attached single-
2 family dwellings and significant open space proposed for the
3 subject property would create an area of low to medium
4 density in keeping with the mixed character of surrounding
5 land use.

6 The proposed development with 13.7 dwelling units
7 per acre would have greater density than five to seven
8 dwelling units per acre seen in the surrounding R-60 and R-
9 90 properties. However, it would have a density lower than
10 the adjacent multi-family uses in the R-30 and R-20 Zones
11 which have an average density of 30 dwelling units per acre
12 and substantially lower than the high density CBD.

13 Finally -- do you see all of that?

14 A Yeah.

15 Q Let's go back to page 9. This is part of the
16 settlement. The binding elements do not, this is the, at
17 the bottom of the page, the binding elements do not
18 specifically address the future of the Wheaton Community
19 Center but they provide the applicant's commitment that the
20 Rafferty Center will be maintained as a public facility if a
21 public entity assumes responsibility.

22 Do you see the Rafferty Center on page 18? Do you
23 know what that is?

24 A Yes. I see it.

25 Q Do you know what it is?

1 A No, I don't.

2 Q Go back to page 8 at the bottom. Isn't it
3 identified as Good Counsel's gym/multipurpose recreational
4 facility?

5 A Yes.

6 Q All right. No further questions on this topic, on
7 this particular one. Let's go to the Oxbridge, G-822.

8 MR. BROWN: And again, I will make the entire --

9 MS. ROBESON: You anticipated what I was going to
10 say. I'll let it in if you make the entire decision --

11 MR. BROWN: Fine.

12 MS. ROBESON: -- report available.

13 MR. BROWN: This is 144?

14 MS. ROBESON: Yes.

15 (Exhibit No. 144 was marked for
16 identification.)

17 MS. ROBESON: Thank you.

18 BY MR. BROWN:

19 Q Here, Mr. Iraola, I've only included the summary,
20 and I ask you to identify what the zoning, the RT zoning
21 that was approved was.

22 A RT-8.

23 Q How many single-family townhomes?

24 A Thirty.

25 Q How many acres?

1 A Approximately 5.6872 acres.

2 Q Gosh, that's a little more acreage than in your
3 proposal, isn't it?

4 A Yes.

5 Q And what's the density per acre?

6 A 5.3 units per acre.

7 Q Nothing further on that one. Let's go to page
8 257.

9 MS. ROBESON: Of his testimony?

10 MR. BROWN: Yes.

11 BY MR. BROWN:

12 Q Now, at the top of page 257, you indicate that
13 there are a number of zoning cases where RT zoning was
14 granted without master plan designation, right?

15 A Yes.

16 Q And you mention some of them.

17 A Um-hum.

18 Q I have the same question for you here as I asked
19 you about these other re-zonings. Is it your position that
20 this case presents a stronger case for re-zoning than these
21 examples that you've cited on this page?

22 A Yes.

23 Q We've already talked about Good Counsel. That's
24 the first one that you mentioned. Let's go to 858, the Katz
25 property.

1 MR. BROWN: And I guess we're up to Exhibit 145 --

2 MS. ROBESON: Right.

3 MR. BROWN: -- subject to providing the full
4 exhibit.

5 (Exhibit No. 145 was marked for
6 identification.)

7 BY MR. BROWN:

8 Q Let's look at the summary again, Mr. Iraola. What
9 is the proposed zoning that was approved in this case?

10 A RT-12.5.

11 Q How many acres?

12 A Approximately 2.53 acres.

13 Q For how many townhomes?

14 A Twenty-seven townhomes including four MPDUs.

15 Q For a density of what?

16 A 10.7 units per acre.

17 Q Again, this is a lower density than you're
18 proposing, correct?

19 A Yes, it is.

20 Q All right. I'd like to direct your attention to
21 page 12 and 13 which show a layout of the proposed site. Do
22 you see the 27 townhomes there?

23 A Yes.

24 Q How many of them front directly on Georgia Avenue?

25 A Ten.

1 Q How many of them front on existing single-family
2 residences or abut or confront properties that are existing
3 single-family residences?

4 A I would say approximately seven.

5 Q Can you show me where they are?

6 A Evans Drive, which I believe is the drive that,
7 the street that's perpendicular to Georgia Avenue, there are
8 four or five that front onto it, and going back one more
9 stick towards the interior of the site, there's an end that
10 would front onto Douglas Avenue, and then going further up
11 near the top of the ball to the cul-de-sac would be another
12 one that would front onto Douglas Avenue too, so that would
13 be seven.

14 Q At the time of this proposed development, there
15 were no homes up there in the upper part of Douglas Avenue,
16 were there?

17 A I don't know.

18 Q All right. And there are, in effect, three
19 directly impacted single-family residences in this entire
20 project, right?

21 A I can't make that conclusion.

22 Q The last one that I have a copy of that you
23 mentioned is 817, the Woodside project.

24 MR. BROWN: So this would be No. --

25 MS. ROBESON: 146.

1 MR. BROWN: -- 146.

2 (Exhibit No. 146 was marked for
3 identification.)

4 BY MR. BROWN:

5 Q Looking again at the summary, Mr. Iraola, what's
6 the zoning on this property?

7 A RT-12.5

8 Q How many single-family townhomes?

9 A Twenty-three.

10 Q Plus what?

11 A Three existing single-family homes.

12 Q Those would be retained?

13 A Yes.

14 Q What's the density per acre?

15 A 9.7 units per acre.

16 Q This is the townhome development on Georgia Avenue
17 that you referenced in your testimony, isn't it?

18 A Yes.

19 Q Let's look at page 5. On the description of the
20 subject property, would you read aloud the second sentence?

21 A Georgia Avenue conveys major commuter traffic
22 volumes past the site and separates the residential
23 neighborhoods of Woodside and Woodside Park which are more
24 stable and mature neighborhoods.

25 Q Which are both stable and mature neighborhoods.

1 A Which are both stable and mature neighborhoods.

2 Q Do you agree with that?

3 A Yes.

4 Q And the next paragraph tell us how many, how much
5 road frontage there is on this project along Georgia Avenue,
6 right? How much is it?

7 A Quote, "The property has approximately 568 feet of
8 road frontage along Georgia Avenue, 218 feet of frontage
9 along the south side of Noyes Drive and 350 feet of frontage
10 on the north side of Noyes Drive.@

11 Q All right. Going to page 11, and putting aside
12 for a moment the existing single-family homes that are being
13 retained, how many other of existing single-family homes, as
14 a result of this development, are going to be facing
15 residential townhomes?

16 A Facing?

17 Q Confronting or abutting. Maybe it would help to
18 look at page 9 as well.

19 A Along Noyes Drive, there are two.

20 Q Okay. All right. Mr. Iraola, I'd like you to
21 turn to your testimony from your prior testimony in this
22 case to page 294, 293/294.

23 A Okay.

24 Q I asked you this question at the bottom of page
25 293. "Do you believe it's appropriate, as a land planner,

1 in evaluating a request for re-zoning to evaluate what could
2 be done under existing zoning?@ And your answer
3 was,"Sometimes.@ Well, maybe I should ask you just to
4 repeat your answer because I'm not, I don't quite get it
5 from this transcript.

6 A I said, "Sometimes. Not, maybe not in this
7 case.@

8 Q And I believe the gist of your testimony was that
9 you were not asked to look at the potential for development
10 of this property under R-60, were you?

11 A That's correct. In terms of the physical layout,
12 that's correct.

13 Q Why was that? Was that because your work
14 agreement, your, whatever contractual arrangement you made
15 with this developer precluded you from doing that or you
16 thought it wasn't necessary?

17 A It wasn't necessary at this time.

18 Q Well, I wondered about that. I'd like to show you
19 the statute that sets forth the intent and purpose of the
20 zone.

21 MS. ROBESON: And this would be 147.

22 (Exhibit No. 147 was marked for
23 identification.)

24 BY MR. BROWN:

25 Q Mr. Iraola, would you read aloud the last sentence

1 of this, of Section 59-C-1.721?

2 A The fact that an application for RT zoning
3 complies with all specific requirements and purposes set
4 forth herein shall not be deemed to create a presumption
5 that the resulting development would be compatible with
6 surrounding land uses and in itself, shall not be sufficient
7 to require the granting of the application.

8 Q Now, tell me, as an expert land planner, what that
9 means to you in terms of the kind of obligation that you
10 have to convince the Government that the property should be
11 re-zoned.

12 A This, I think, speaks to certainly compatibility,
13 and compatibility is really judged on a, on a case by case
14 basis with regards to that. When I read this, it just
15 essentially says that even though you meet those tests, you
16 still have to prove that there is, there is compatibility
17 with regards to what is surrounding the property that it is
18 potentially affecting.

19 Q So it's definitely not by-right development, is
20 it, in the way of standard Euclidean zoning?

21 A What is not?

22 Q Getting re-zoning back to an RT zone.

23 A Right. Well, RT is a, essentially, it's a
24 floating zone but it's, for all intensive purposes, is a
25 Euclidean zone.

1 Q But if a client came to you for advice --

2 A Yes.

3 Q -- about this, you would tell them that they would
4 have to reach the extra mile beyond merely complying with
5 the development standards for the zone.

6 A Absolutely.

7 Q And it's because of this language that that is so,
8 isn't that right?

9 A Yes.

10 Q So why wouldn't it be important to, in convincing
11 the Government to change the zoning, to show that what you
12 are doing is an improvement over the existing zoning?

13 A When I reviewed, certainly, when I reviewed the
14 case, it seemed very appropriate just offhand that it would
15 be very appropriate for RT zoning given it's location and
16 certainly, my familiarity with the CBD zoning. The R-60
17 Zone, in my mind, was not an appropriate zone for a site
18 that is this close to Metro.

19 Q But that's the existing zoning.

20 A I understand.

21 Q Well, let's look at the development potential
22 under the existing zoning.

23 A Okay.

24 MR. BROWN: My next exhibit is a copy of the
25 cluster zones for R-60, Section 59-C-1.6.

1 MS. ROBESON: That would be 148.

2 (Exhibit No. 148 was marked for
3 identification.)

4 MS. ROBESON: Mr. Harris, do you have any
5 objections?

6 MR. HARRIS: No objection, but I actually wasn't
7 asked and I should have spoken up. On 147, here again, this
8 is one page from the RT zone. I think we should have the
9 entire RT zoning section.

10 MS. ROBESON: All right. I agree.

11 MR. BROWN: Happy to oblige.

12 MS. ROBESON: I prefer to have full copies if you
13 can.

14 (Exhibit No. 148 was received into
15 evidence.)

16 BY MR. BROWN:

17 Q In this case, Mr. Iraola, I believe I have given
18 you the entire section dealing with cluster zoning including
19 moderately-priced dwelling units.

20 A Yes. I believe it's Section C-1-66 -- I'm sorry.
21 C-1-66 -- I'm sorry. Section 59-C-1.6 and 1.7 address
22 those.

23 Q All right. Let's just go through the highlights
24 if we could, please. Section 59-C-1.662, density of
25 development for R-60 would be 6.1, correct?

1 A I'm sorry. What, which one are you referring to,
2 the cluster or the cluster with MPDU?

3 Q We're dealing with, this entire thing is cluster
4 with MPDUs and on page, on the second page of this handout,
5 Section 1.622 specifies the density for R-60, correct?

6 A Yes.

7 Q 6.1.

8 A That's correct.

9 Q Now, we multiply that times the gross tract area,
10 right?

11 A Um-hum.

12 Q By my calculator, I get 32 units and a fraction.

13 A Yes. That's correct.

14 Q All right. Now, I don't have the chapter 25A with
15 me but I believe you know that the maximum density bonus you
16 can get in a situation like this is 22 percent if you
17 provide 15 percent MPDUs, right?

18 A That's, that is correct.

19 Q So let's multiply 32 times 122 percent. What do
20 we get?

21 A I believe it's 39.

22 Q I get 39, do you?

23 A I do.

24 Q So the maximum development potential for this
25 property density-wise, under existing zoning if a cluster

1 development is approved, would be 39 units, right?

2 A That's correct.

3 Q And those townhomes would have to be 1500 square
4 feet unless the Planning Board approved a, the lots would
5 have to be 1500 square feet unless the Planning Board
6 approved a smaller size.

7 A Yes. That's correct.

8 Q You wouldn't have any trouble getting 39 1500
9 square foot lots on this parcel, would you?

10 A I don't believe so.

11 Q Also, footnote 1 on the, on page, on the fourth
12 page of this handout limits the townhomes percentage to 60
13 percent. Do you see that?

14 A Yes, I do.

15 Q But it also says that the Planning Board may
16 approve development in which up to 100 percent of the units
17 could be townhomes, right, under certain circumstances?

18 A Yes.

19 Q Do you have any doubt in your mind that if you can
20 demonstrate to the satisfaction of the District Council that
21 76 townhomes are an appropriate development of this
22 property, that you would have difficulty demonstrating to
23 the Planning Board that 100 percent of development at R-60
24 cluster should be townhomes?

25 A I would say that it -- you're probably under-

1 utilizing the site.

2 Q That's not the question though. The question is
3 would you have any difficulty demonstrating that you met the
4 land use standards for the R-60 cluster?

5 A Would I have -- no. I would not have any
6 difficulty.

7 Q I beg your pardon?

8 A I would not have any difficulty. However, there
9 are other, you know, factors to consider.

10 Q There are other factors. I understand that. All
11 right.

12 MR. BROWN: This is my next exhibit.

13 MS. ROBESON: This will be 149.

14 MR. BROWN: This is 149?

15 MS. ROBESON: Yes. I have 148 as Section 59-C-
16 1.61.

17 (Exhibit No. 149 was marked for
18 identification.)

19 BY MR. BROWN:

20 Q All right. Mr. Iraola, I'm going to take a minute
21 to explain to you what I've done here because I did this
22 myself and I want you to understand what this document is.
23 First of all, in recent days, you provided us a revised
24 green area document, the applicant did, and it was sent to
25 us by email.

1 A Yes.

2 Q Do you remember that?

3 A Yes.

4 Q This is that document except that what I did was I
5 just cut out with scissors the actual development that was
6 shown on that document and then using some of the actual
7 banks of townhomes that were within that plan, I just did a
8 little cutting and pasting and rearranging and limited this
9 development to 39 townhomes using the larger size townhomes
10 in the development. Do you see that?

11 A Yes.

12 Q All right. Is this development generally
13 consistent with the R-60 cluster with MPDU option?

14 A I can't make that conclusion.

15 Q You'd have to evaluate it in more detail, correct?

16 A Yes.

17 Q You would need seven MPDUs, right?

18 A Based on what scenario, the 39?

19 Q Yes.

20 A Approximately, yes.

21 Q Okay. What I've done here, Mr. Iraola, is to
22 increase the green area and I've colored it in. The
23 increase in the green area, I've colored it in with a color
24 that's slightly different gray color than the, than showed
25 up with the, with my photocopy of the colored green area

1 exhibit. Do you see that?

2 A Is it what's cross-hatched?

3 Q Yes. All of this would be additional green area
4 under my plan and under my plan, the property would be
5 entered from Ellsworth Avenue with some appropriate
6 reconfiguration of the driveway or parking area.

7 MS. ROBESON: Mr. Brown, is there a question in
8 here?

9 MR. BROWN: I'm going to ask several questions
10 about this.

11 MS. ROBESON: Okay.

12 BY MR. BROWN:

13 Q Assuming for purposes of discussion that this plan
14 or some variation on it could be approved at, under the
15 existing zoning, I want to ask several questions that
16 compare this plan or its variant as approved, with your
17 plan.

18 First of all, I'm going to page 212 of your
19 testimony. Let's go to page 222. One of the desirable
20 features of your plan as you've described it, lines 9 and
21 10, is that it will have rear alleys that will access
22 garages that will connect to a private street. Do you see
23 that?

24 A Yes.

25 Q This plan that I've, this Exhibit 149 plan does

1 that just as well, doesn't it?

2 A No, it doesn't.

3 Q Why not?

4 A Your alleys are essentially exposed to your, to
5 your green space areas on both ends of, along the corner at
6 Ellsworth and Springvale and the corner of Ellsworth, or and
7 the corner of Springvale and Pershing.

8 Q Okay. So you think it would be better for a
9 townhome to, the front of a townhome to face the
10 environmental setting for the historic home than for an
11 alley to face it, right?

12 A Yes.

13 Q Okay. Let's move down the page to line 17. "The
14 individual rows of townhomes are oriented perpendicular to
15 and set back from Springvale Road.@ This plan is no
16 different, is it?

17 A They are set back from Springvale Road, correct.

18 Q Sidewalks would be provided in this plan, wouldn't
19 they?

20 A I don't see any sidewalk connections.

21 Q No. I'm just, I'm not changing anything about
22 your plan other than this internal configuration so --

23 MR. HARRIS: Madam Examiner, I would like to
24 object at this point in time. I've let this go on for quite
25 a bit. This is an evaluation of a speculative plan that Mr.

1 Brown has designed, and under the existing zoning, there is
2 no requirement under the RT zone, which you have in front of
3 you there, that says you have to examine whether a property
4 could be developed under its existing zoning. The cases
5 that Mr. Brown has provided, none of them has any study of
6 any evaluation of the existing zoning in those cases. It
7 simply is not a requirement. We're getting way beyond the
8 issues that are pertinent here.

9 MS. ROBESON: Mr. Brown?

10 MR. BROWN: I think it's perfectly appropriate to
11 evaluate what came -- we're talking about a re-zoning here
12 so let's look at what can be done under existing zoning.

13 MS. ROBESON: Well, I tend to agree with Mr.
14 Harris on this one. The question is, there's no question
15 the question is compatibility. It could be less dense under
16 R-60, it could be less dense under RT-8 or RT-12, so if your
17 point is that it could be less dense, there's no need
18 requirement here so I do agree with Mr. Harris. If you
19 could move on from this sketch that you prepared yourself, I
20 think that would be more expeditious.

21 BY MR. BROWN:

22 Q Let me ask the question in this very general form,
23 Mr. Iraola. Is there anything about this plan with 76
24 townhomes, your plan, that can't be equally or better
25 achieved with 39 townhomes?

1 A The way this is configured, I would say it's
2 less --

3 MS. ROBESON: Wait. What's this?

4 THE WITNESS: I'm referring to 149.

5 BY MR. BROWN:

6 Q I'm not talking about my plan now, Mr. Iraola.
7 I'm talking about a plan with 30 townhomes.

8 A A plan with 39 townhomes.

9 Q Yes.

10 A In my mind, the appropriateness of 39 versus 76,
11 76 is a better transition from a density standpoint when we,
12 when we're confronting a CBD within a transitional block.
13 Essentially, the density also affords additional people
14 living within the proximity of the CBD and taking advantage
15 of the revitalization efforts that occur within the CBD.
16 More density certainly affords you that. There would be a
17 loss of tax space, essentially, when you're dealing with
18 less density compared to a lesser density plan.

19 Additionally, you know, the RT-15 Zone was adopted
20 in 1997 and it's really to, the purpose and rationale for it
21 was to assemble and redevelop viable land that's near
22 transit stations. By adding additional density, it
23 certainly makes that, that finding certainly a lot more
24 compatible and makes a lot more, makes a lot more sense with
25 regards to adding near, density near transit stations in

1 addition to being, in keeping with the housing element of
2 the general plan and also with smart growth measures and
3 other larger policy elements. The density certainly would
4 afford that. In my mind, this plan would be, would meet a
5 lot of those goals and objectives a lot clearer than a less
6 dense plan.

7 Q Looking at page 240 of your testimony where you
8 talked about compatibility at the top, you say first, the
9 proposed residential use will replace an institutional use
10 within a residential neighborhood. That's true whether the
11 density is 39 or 76, right?

12 A That's correct.

13 Q "Townhomes and one-family detached homes are both
14 one-family building types.@ That's true whether there are
15 39 townhomes or 76 townhomes, right?

16 A Yes.

17 Q "The proposed townhomes will be in fee-simple
18 ownership similar to the majority of the homes in Seven
19 Oaks-Evanswood neighborhood.@ True whether it's 39 or 76,
20 right?

21 A That would depend on who was proposing.

22 Q What?

23 A That would depend on who would be proposing. This
24 applicant is proposing a fee-simple scenario.

25 Q "The townhomes will not be multi-family

1 structures, they will not be apartments and they will not
2 have condominium ownership.@ So again, you're saying that
3 that would all depend upon the applicant's wishes, right?

4 A That's correct.

5 Q You also say on page 241 compatibility is enhanced
6 by providing additional building setbacks along three street
7 frontages. Do you see that?

8 A Yes.

9 Q Isn't it the case that with 39 rather than 76
10 units, you have even more room to provide additional
11 setbacks?

12 A Possibly.

13 Q You say --

14 MR. HARRIS: Again, Ms. Robeson, we're delving
15 into what other options could, might be for this property
16 and that is simply an irrelevant and immaterial issue here.
17 We don't have to prove that other options are infeasible or
18 undesirable. We only have to prove the purposes of the RT
19 zone that are here, which Mr. Iraola testified to, and it
20 didn't concern any of this.

21 MS. ROBESON: Well, I think this line is more
22 relevant because it's dealing with what your land planner
23 says are the goals. I think the point he's bringing out is
24 perhaps those goals could be met with less density, so I'm
25 going to overrule your objection and let Mr. Brown continue.

1 How close are you to finishing, Mr. Brown?

2 MR. BROWN: Pretty close.

3 MS. ROBESON: Okay.

4 MR. BROWN: Just a few more. I'm not going to
5 repeat myself although Mr. Iraola repeated these benefits
6 over and over again in his testimony.

7 MS. ROBESON: Well, you just asked him again so --

8 MR. BROWN: Yes.

9 BY MR. BROWN:

10 Q You indicated in your testimony that this location
11 achieved a walk score of 89 and that was very good, right?

12 A Yes. I believe I did.

13 Q That walk score is independent of how many units
14 are on the property, isn't it?

15 A It refers to the site and the address.

16 Q The answer to my question is yes, is that right?

17 A Yes.

18 Q Thank you. You mentioned in your testimony, page
19 247, that you wanted to be sure to provide, this is line 13,
20 "enough adequate parking so that spillover parking doesn't
21 occur in the neighborhoods.@ Remember that testimony?

22 A Yes, I do.

23 Q Isn't it the case that if you provide 30 units
24 instead of 76 units, there's a lot more room for there to be
25 potential for onsite parking outside of the actual townhouse

1 units themselves?

2 A Possibly.

3 Q You also indicated that it was a benefit to this
4 property, I'm looking at the bottom of page 247, that you
5 agreed to a binding element of 40 percent rather than the
6 minimum 30 percent on green area, right?

7 A Yes. That's correct.

8 Q That's a benefit because there's more open space,
9 right?

10 A Yes.

11 Q And with 39 units instead of 76 units, there might
12 be an even greater potential for more open space, isn't that
13 so?

14 A Possibly.

15 Q You also testified about an issue of inadequate
16 capacity at the elementary school. Do you recall that, page
17 263?

18 A Yes.

19 Q And on page 264, you said currently, this school
20 is at yellow for the Sligo Creek Elementary School and it's
21 really just slightly into the yellow piece of it. Is
22 that --

23 A Yes.

24 Q I don't understand that testimony. Are you saying
25 there that this school is contributing slightly more than is

1 authorized or is the school itself over capacity?

2 A This school is under capacity I believe. The
3 cluster is in that range within, it's not quite in
4 moratorium. It's when you're exceeding 105 percent
5 capacity, between 105 percent capacity and 120, you're in
6 that yellow range, you're in an -- it won't shut you down.
7 You still have to pay within the school's facilities fee but
8 you're not in moratorium.

9 Q Would you have less of an issue, less of a problem
10 if there were half as many units?

11 A Well, that would have to go through testing. I'm
12 not sure. My sense is probably less but it's not an issue
13 with this particular school. It's an issue with cluster.

14 Q And this project will contribute to the diversity
15 of housing stock in Silver Spring whether the number of
16 townhome units is 76 or 39, won't it?

17 A It will contribute, yes.

18 MR. BROWN: Nothing further.

19 MS. ROBESON: Thank you. Mr. Harris, how long do
20 you think you're going to need for rebuttal?

21 MR. HARRIS: Probably a half an hour.

22 MS. ROBESON: Okay. Let's do this then. Let's
23 take a 15 minute break and we'll come back and do the
24 rebuttal and then we can take 45 minutes for lunch, okay?

25 MR. HARRIS: Thank you.

1 MS. ROBESON: All right. We're off the record.

2 (Whereupon, at 11:24 a.m., a brief recess was
3 taken.)

4 MS. ROBESON: We're back on the record. Mr.
5 Harris, are you --

6 MR. BROWN: Before we get started with Mr. Harris,
7 I do have a preliminary matter that just came up during the
8 break if I might.

9 MS. ROBESON: And okay. What is that?

10 MR. BROWN: The clients that I represent in this
11 case and in other cases have always had extreme difficulty
12 finding expert witnesses willing to testify that something
13 should be developed. It's just the nature of the expert
14 witness population out there and it's very difficult to find
15 expert witnesses. When I submitted my pre-hearing
16 statement, we had no belief that we would ever find a
17 traffic expert that would be available and willing to
18 testify in opposition to the traffic testimony we're going
19 to hear from mister, the Wells folks today but just this
20 morning, I've been informed and I've been provided a copy of
21 testimony from someone willing to testify as an expert
22 witness and I wanted to let you know this to provide you a
23 copy of her resume and the testimony as soon as possible so
24 that there would be no problem with regard to timeliness of
25 her examination which can take place if not today --

1 MS. ROBESON: On the 30th.

2 MR. BROWN: -- the 30th would be fine.

3 MS. ROBESON: Well, I think it would have to take
4 place, in fairness to the applicant, on the 30th so that
5 they have a chance to review her testimony. Do you have an
6 objection to that, Mr. Harris?

7 MR. HARRIS: Well, I would make a note for the
8 record that that sort of information was supposed to have
9 been provided well before the hearing started even on the
10 26th and wasn't, so this does not conform with the rules of
11 procedure here so I would note an objection to it. I would
12 like to, after the hearing today, have an opportunity to
13 review what Mr. Brown has provided and I don't think we need
14 to make a decision today because under any circumstances, it
15 would certainly be inappropriate for that person to testify
16 today. We may be able to withdraw our objection and let it
17 go forward then, but I think you could defer decision on the
18 question.

19 MS. ROBESON: Given the lateness of the timing, I
20 will defer the decision until we do have -- now, I will say
21 this, that you have almost a full 30 days before the 30th.
22 What I am going to make her do, I will look at it again at
23 the end of the day, or are you asking not to make a decision
24 today, that you want to look at what the person's going to
25 say?

1 MR. HARRIS: I would like to consult with my
2 client and my traffic expert. I'd like to see who this
3 person is and we could resolve it before we close the
4 hearing today.

5 MS. ROBESON: Who is the expert witness?

6 MR. BROWN: Her name is Cinzia Cirillo. She --

7 MS. ROBESON: And what, is she with a firm or --

8 MR. BROWN: She's an assistant professor at the
9 University of Maryland in the Department of Civil &
10 Environmental Engineering and also affiliated with the
11 National Center for Smart Growth.

12 MS. ROBESON: Well, all right. I would like the
13 document in the record today.

14 MR. BROWN: All right.

15 MS. ROBESON: Holding a decision on the ultimate,
16 you know, whether or not she's going to testify, but I just
17 want it documented today that it was presented so that the
18 time period starts running, okay?

19 MR. BROWN: Okay. I just wanted to be clear that
20 we -- there's nothing strategic going on here. I just got
21 this testimony. I haven't even read it.

22 MS. ROBESON: Okay. That's fine. Let's put it in
23 the record. It will be Exhibit 150. And what is it?

24 MR. BROWN: We have two things. We have her CV
25 and we have her testimony.

1 MS. ROBESON: Okay. So 150A is going to be here
2 CV and 150 B is going to be her testimony.

3 (Exhibit Nos. 150A and 150B were marked
4 for identification.)

5 MR. HARRIS: And is that being marked as an
6 exhibit subject --

7 MS. ROBESON: It's only being --

8 MR. HARRIS: -- to admission?

9 MS. ROBESON: Exactly.

10 MR. HARRIS: Right. Okay.

11 MS. ROBESON: The only reason is I want it in the
12 record that it came in today.

13 MR. BROWN: She is here if you have any questions
14 about, any procedural questions dealing with her --

15 MS. ROBESON: No. I would prefer to let you and
16 Mr. Harris see if you can reach agreement on it before we
17 get into a voir dire because I would like to be able to
18 release Mr. Iraola today. Did I say that right?

19 THE WITNESS: Iraola. A lot of vowels.

20 MS. ROBESON: I'm sorry.

21 THE WITNESS: That's all right.

22 MS. ROBESON: So 150A is the academic resume and
23 150B is the testimony. Okay, Mr. Harris.

24 MR. BROWN: Thank you.

25 MR. HARRIS: All right.

1 REDIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q Mr. Iraola, I want to turn back the clock a bit to
4 the May 26th hearing because there were some questions there
5 that I want to get you to clarify. There was a question, in
6 fact, I believe it was from the Hearing Examiner, about how
7 this particular site functions as a transition and how it
8 relates to the edge of the CBD, and so that there's no
9 confusion, I would like you to walk us through that again,
10 please.

11 A I'll refer to Exhibit 130 which is the density
12 comparison. Essentially, you see the subject property kind
13 of towards the center of this image. To the south of Cedar
14 is the CBD line as everyone is very familiar with now.
15 Currently, there's being proposed in downtown Silver Spring
16 but unbuilt is a 220 unit multi-family building right on
17 this corner. The density there is 112 units. This
18 transitional block that's defined by Cedar, Ellsworth,
19 Springvale and Pershing is in between the higher density
20 within the CBD and kind of the moderate density that's in
21 the south Oaks-Evanswood neighborhood. That essentially
22 defines what I would consider a transitional block if you
23 will.

24 Also, in addition, with regards to Pershing, Cedar
25 and Springvale and Wayne, this particular block has similar

1 characteristics. However, the big difference is that
2 Springvale Terrace is located kind of on the north side of
3 Springvale Road. It is surrounded by multi-family on one
4 side currently and institutional opposite Pershing, single-
5 family detached along Wayne and a mixture of office and
6 retail along the CBD which is zoned CBD. Additionally, I
7 should mention that, you know, that this, for all intensive
8 purposes, is going to be, the proposed development of
9 townhomes will be a lot more compatible with regard to this
10 particular block because you will be reinstating a
11 residential use where currently, an institutional use exists
12 as well.

13 Q Okay. Secondly, at the last hearing you were
14 asked by Mr. Brown about the setback along Springvale and
15 the setback along the, I'll call it the south property line
16 towards the homes on Cedar, and you were explaining how we
17 might or how the site would qualify for a waiver of the
18 setback there. And would you walk us through that in a
19 little more detail again, please?

20 A Certainly. Let's refer to Exhibit 30A which is
21 the schematic development plan. As I mentioned it, the
22 required setback from one-family zoning, which would be
23 along the south side, is 30 feet. What's being provided is
24 about 21.86 feet, approximately 22 feet. And how that came
25 about was that the plan certainly evolved with comments not

1 only from the, from the citizens but also, comments
2 certainly from Planning staff as well but in order to
3 accommodate the additional setback dimension along, along
4 Springvale, the plan was compressed essentially.

5 Also, the previous plan did not really have the
6 front treatment along Private Street A or the equivalent of
7 Private Street A as well so therefore, that dimension,
8 building face to building face, along Private Street A was
9 increased as well which also added to it. That is, is a
10 much better condition to have a front and a little bit more
11 dimension along that street to make the pedestrian realm a
12 little bit more comfortable along Private Street A.

13 Also, this compression really was used to
14 accommodate some additional pocket parks along the side. It
15 got reconfigured a little bit differently but it certainly
16 was, that was certainly a part of it as well. Also, Private
17 A Street, Private Street A, being a private street, it also
18 was simplified. It simplified and rationalized the plan as
19 well. The previous plan had an intermediate block that was,
20 and a lot of street frontage that was put on there. This is
21 a much more rationale and simpler geometry.

22 In terms of the loss/gain, what, the differential
23 between what is lost on the south side and what is gained on
24 that is only about 876 square feet gained simply because,
25 you know, the ends of the townhome dimension here is less

1 than the length here, so the differential is only about 876
2 square feet of, of loss. Additionally, the added dimension
3 along Springvale Street allows for a double row of street
4 trees which certainly adds to a promenade dimension, and 25
5 feet is an adequate dimension for a promenade with a double
6 street. And along Georgia Avenue and the CBD and along
7 East-West Highway and the CBD, that is, that is the
8 dimension that is used to accommodate a promenade along
9 there as well.

10 Q So do you have an opinion as to whether that
11 waiver would likely be granted by the Planning Board or not?

12 A Certainly, it is up to the Planning staff's
13 approval but I have, I'm pretty confident that we would be
14 able to get that, that waiver request based on that
15 justification.

16 Q You were asked today about a record plat and a re-
17 subdivision. Is it your expectation that this property
18 would go through a re-subdivision?

19 A Yes. It has to.

20 Q And do you have an opinion as to whether that re-
21 subdivision would be approved?

22 A I believe it would.

23 Q And as far as the environmental setting and
24 recorded covenant that you talked about, is it your
25 understanding that that would have to be revised at a later

1 date as well?

2 A Yes, it would. It has to go through the Historic
3 Area Work Permit process with the Historic Preservation
4 Commission, so they would have authority over where the
5 street goes or any other things related to the historic
6 setting and modifications.

7 Q Similarly, with respect to the trees and the
8 environmental, the forest conservation easement on that, do
9 you have an expectation as to what would be done and when
10 there?

11 A That would certainly occur also during site plan
12 and preliminary plan, that process. Environmental Planning
13 staff would certainly have to weigh in with regards to the
14 trees and so forth. I think, I believe we'll have another
15 expert here that will testify to the extent of the forest
16 cover and its condition.

17 Q And do you know whether the Park and Planning
18 staff supported the anticipated revision to that Category 2
19 easement?

20 A Yes, they did.

21 Q And did the Planning Board endorse the staff's
22 report in that respect?

23 A Yes, they did.

24 Q As far as the access road, you were starting to
25 talk about the Historic Preservation Commission, and can you

1 tell us whether you believe that approval of an access road
2 through the historic setting is approvable?

3 A I believe it is. There's a number of different
4 ways of providing that access. Right now, it's just kind of
5 located on Pershing kind of mid-block. Certainly, there's
6 an existing access point to the south or essentially in the
7 front of that that could be explored. It was approved at
8 the, the Hearing Examiner, I'm sorry, the Board of Appeals
9 had approved the alignment. Obviously, it's going to be
10 subject to HPC approval but on the south side of, of the
11 existing home.

12 Additionally, the access point can slide really
13 almost anywhere along Pershing. It could go onto the
14 opposite, the line with the opposite side of Springvale Road
15 where it kind of jogs. There's -- I think it would be kind
16 of on the, it would be on the east side of Pershing. It
17 could, although we've heard testimony from citizens at the
18 Planning Board and certainly, objections during the
19 community outreach meetings that access along Springvale was
20 not acceptable to the community as well, but that is still
21 kind of an option.

22 Q And did the Planning staff support this schematic
23 development plan that shows that access point to Pershing
24 Drive?

25 A Yes, they did.

1 Q And did the Planning Board endorse the staff's
2 support for that schematic development plan as well?

3 A Yes, they did.

4 Q Are you familiar with access roads, driveways, et
5 cetera, that traverse historic settings in other situations?

6 A The one that comes to mind is Strathmore Hall,
7 clearly, a significant historic home and now facility within
8 Montgomery County. There is a parking area and an access
9 drive that leads to it on the east side of the building,
10 between that and the new concert hall. That is within a
11 historic setting, but it was approved.

12 Q You were asked a question about townhouses
13 adjoining the CBD and I didn't follow the question
14 carefully, but I think the question was whether you were
15 aware of any townhouses along, around Silver Spring CBD that
16 were, did not directly adjoin the CBD so if --

17 A Sure.

18 Q Can you clarify that for us, please?

19 A I'd like to, this is Exhibit 112G which is
20 entitled "Neighborhood Contacts (Aerial)@. There, it's
21 actually shown on this plan. There is a, two sets of, two
22 sticks of townhomes that face each other in a muse condition
23 which is located on Fairview Road north of Spring Street.
24 It's not too far from the, from the subject property. It's
25 the street that's essentially opposite of public parking

1 garage which is located on Spring Street that serves Park
2 and Planning.

3 There is, it's a stick of townhomes. It looks
4 like approximately 10, 10 to 12 townhomes that are, that's
5 located along Fairview Road, on the east side of Fairview
6 Road, one block, or essentially, one or two parcels in from
7 Spring Street. That is clearly within the North and West
8 Silver Spring Master Plan area and I believe that was one of
9 the properties, in addition to a couple of properties up in
10 Montgomery Hills, that were reconfirmed as townhome
11 developments.

12 Q Turning to the Good Counsel RT zoning case, G-798,
13 to what degree do you think the neighborhood where that is
14 compares or contrasts with the, around the Chelsea site?

15 A It's a very different site in the sense that its
16 relationship to the CBD, it's further north from the CBD.
17 Several blocks, in fact, from the CBD of, of Wheaton CBD on
18 Georgia. There's surrounding R-90 zoning which is a little
19 less dense than the R-60 as well. It is not really within
20 proximity or a very nice walking distance to Metro in that
21 regard as well. This site is particularly better suited for
22 proximity to Metro and it's a much more pleasant walk.

23 Q So how do you believe the RT-15 zoning compares at
24 the Chelsea site to the RT-15 zoning approved at the Good
25 Counsel site?

1 A This, I believe, is a much, much better plan or
2 use of the RT-15 Zone mainly because of its proximity to the
3 CBD compared to Wheaton. Wheaton's revitalization really
4 hasn't gone off the ground yet. Also, with regards to the,
5 there's no, the, that was along an edge condition also,
6 along Georgia Avenue which is a little different than this
7 particular case as well.

8 Q You were asked a question about something referred
9 to as the Rafferty Center, the former gym at the Good
10 Counsel site. Do you know whether that is going to remain
11 or to be demolished?

12 A Well, I've been checking some aerials and it's, I
13 believe it's demolished and has been replaced with
14 townhomes. Plus, the plan that was in the special exception
15 is, the schematic development plan is very different from
16 what's actually been built there.

17 Q You were asked about the Katz site on Georgia
18 Avenue between Wheaton and Silver Spring. Let me ask you
19 again how that site compares or contrasts from an RT zoning
20 standpoint with the Chelsea site.

21 A Again, the Katz, the Katz site, get it right, the
22 Katz right is along Georgia Avenue along a very major
23 corridor. It's very different. In addition, it's really
24 nowhere near transit. I mean, it's probably along a major
25 bus route but in terms of major Metro access, it's very,

1 very different in that regard. It's a lot smaller,
2 certainly, than the Chelsea development as well.

3 Q Is it closer or further from the CBD?

4 A It's much further from the CBD than the Chelsea
5 proposal.

6 Q And to what extent do you believe RT-15 is
7 appropriate at Chelsea as compared to the Katz Brothers
8 site?

9 A Yeah. Mainly because, you know, the creation of
10 the RT-15 was really for, to increase the density in the RT
11 zones to provide another kind of step up, mainly to address
12 transit or other appropriate sites but mainly, I think the
13 key word right there is really kind of proximity to transit.

14 Q The Woodside, South Woodside I think it might have
15 been referred to, project, Exhibit 146, how close is that to
16 the CBD? Well, let me ask you is it further or closer to
17 the CBD line than is the Chelsea site?

18 A Let's see. Which one is that again?

19 Q The South Woodside one at Noyes I guess it is --

20 A Oh.

21 Q -- and Georgia Avenue.

22 A That one I believe is further away from the, from
23 Metro I should say than this site.

24 Q Again, do you believe that the subject property is
25 a better or weaker case for RT-15 zoning than that case

1 would have been and if so, why?

2 A I believe that certainly from a pedestrian access
3 point to access to transit, this one is far superior in the
4 sense that Ellsworth Drive really is almost a direct link to
5 Metro and it's, and it was done that, purposefully. During
6 the revitalization of Silver Spring, Ellsworth Drive was
7 turned into a front street. It used to be kind of a rear,
8 rear street. Since then, it's been lined with very
9 attractive storefronts, the streetscape has been improved,
10 the center of downtown Silver Spring, essentially, you're
11 going right through it.

12 As a result, between Georgia Avenue and Wayne
13 Avenue, there was a pedestrian signal, pedestrian only
14 signal placed right at that intersection so that people
15 could cross the street. Not at a major intersection but
16 kind of mid-block. Additionally, the configuration of
17 discovery communications also permitted for direct access
18 through their building and around so it led, led directly to
19 Metro in that regard.

20 Q With respect to the RT zone, are you aware of any
21 requirements in the zone or the purposes that require an
22 applicant to analyze the feasibility or desirability of
23 other zones to the proposed zone?

24 A No, I don't.

25 Q And is there any requirement to evaluate the

1 ability to develop a property under its existing zone before
2 you can proceed with a re-zoning to an RT zone?

3 A There's no requirement.

4 Q And are you aware of any evaluation of that issue,
5 that is could the property be developed under its existing
6 zoning, being done in the Good Counsel property?

7 A No, I don't.

8 Q And the Katz Brothers property?

9 A I don't believe so.

10 Q And in the Woodside property re-zoning?

11 A No. Definitely not.

12 Q Do you believe each of those properties could have
13 done cluster development under the R-60 MPDU option that you
14 were questioned about earlier?

15 A They probably could but it's hard to tell what
16 they did without testing the sites.

17 Q But they didn't proceed in that manner?

18 A They did not.

19 Q You were shown a plan that Mr. Brown devised, to
20 which I objected, but since there is some questioning in the
21 record about it already, I'd like to ask you about it.

22 First of all, is that -- assume we were going to develop
23 this property under the R-60 MPDU option which he referred.

24 He's given you, apparently, one example of how he thinks it
25 could be done. Are there other ways to do that?

1 A Absolutely. Under the MPDU option, you could put
2 McMansions here too as well. These are big, very large
3 homes. And an example of how R-60 cluster has been
4 developed even within, this is the Watts property, those
5 homes essentially are 3400 square feet on average. What
6 surrounds them are homes that are very modest at about 1400
7 square feet. It's apparently 2,000 square feet bigger.
8 They are very large and almost use up the entire lot
9 coverage that is allowed within the R-60 Zone.

10 That, in my mind, is, from a design, certainly
11 from a design standpoint and compatibility standpoint,
12 filling homes and lining them all along the perimeter
13 because again, this is R-60 zoning. You need, you have
14 minimum dimensions that are required to, to access a public
15 street. There's only so much frontage along these public
16 streets. Certainly, you would line up with a lot of bigger,
17 bigger homes along the entire perimeter of the site if you
18 were developing that, under that scenario.

19 Q And would they have driveways, likely, along
20 Springvale and Ellsworth?

21 A Right. There's no requirements for rear access or
22 rear-loaded homes and if you look at the Watts, the Watts
23 property, how it's been developed, there are front-loaded
24 garages there and driveways that access onto, onto the
25 public streets. Some of them are rear-loaded but the great

1 majority of them are front-loaded.

2 Q Assuming this property is developed under the
3 schematic development plan that's been presented, how would
4 the number of vehicles accessing Springvale compare between
5 the concept you were just discussing and this schematic
6 development plan?

7 A Well, there would be a lot more trips coming off
8 of it because you have direct access on, you know, however
9 many homes that you could accommodate along Springvale.
10 It's a pretty long, fairly long stretch. But you would have
11 that, those trips that would directly access onto
12 Springvale, where in the case of the subject property and
13 the schematic development plan before you, you wouldn't have
14 that.

15 Q And setting aside for a minute the cluster option
16 as in the Watts property and considering the MPDU option
17 where, that Mr. Brown was walking you through where you
18 could have either 60 percent or up to 100 percent
19 townhouses, might those townhomes also front on Springvale
20 Road?

21 A Yes, they could.

22 Q And might they also front on Ellsworth Drive?

23 A Yes, they would.

24 Q And are you aware of what the public use space or,
25 I'm sorry, the green space requirement is under the MPDU

1 option?

2 A Right. The minimum green space requirement is
3 2,000 square feet per unit.

4 Q Okay. So if you had Mr. Brown's hypothetical, 39
5 units, how much green space would that be?

6 A It's about 1.79 acres.

7 Q And is that less or more than what the green space
8 is that's being proposed in this schematic development plan?

9 A It is less.

10 Q How much less?

11 A We are providing 2.4 acres on the schematic
12 development plan, 1.79 acres of green would be, in theory,
13 under the MPDU option as a minimum.

14 Q And can that space be internal to the site as
15 opposed to along the edges?

16 A There's no requirements for it to be, it can be
17 configured any way. It can be towards the rears of the, of
18 the units, essentially private in nature, or it could be in
19 the front, but it really could be just about any, anyplace.

20 I should also mention the 40, there is a 40-foot height
21 limit also which is five feet higher under the MPDU cluster
22 which from a massing standpoint, if you were to put
23 townhomes there, you could essentially almost do four story.
24 You could squeeze it into four stories under that
25 particular option. Under the 35-foot, you would be very

1 hard-pressed to do four stories.

2 Q Bear with me one moment, please. Considering Mr.
3 Brown's questioning as far as other options and the RT
4 zoning that was approved at other cases, what is your
5 opinion as to the propriety of RT zoning here under the
6 purpose clause of the RT zone, RT-15 zoning here I should
7 say?

8 A Well, with regards to the three qualifying
9 requirements, the first one requires a master plan
10 recommendation which there clearly is not a recommendation
11 from, a specific recommendation from the master plan.
12 However, it does substantially meet the general requirements
13 for, for that.

14 Secondly is kind of the appropriateness which
15 speaks also somewhat to compatibility, and I think I
16 testified with regards to how compatible this would be.

17 The third is whether it's a transition or buffer.
18 I think it's, this subject property certainly is within a
19 transitional block, as clearly illustrated in the exhibits,
20 as well as serving as a buffer to the CBD with a
21 transitional building type which are townhomes.

22 Q And as far as the public interest, to what extent
23 do you believe that this proposal is consistent with the
24 public interest?

25 A Well, again, just to reiterate some of the things

1 I had said, it is in the public's interest, in my mind, to
2 provide additional open space for an area that probably
3 under a traditional R-60 Zone, we would not get the quality
4 of open space that would be provided on this, so that's
5 certainly a benefit to the public in general.

6 The Planning Board acts in the public's interest,
7 fully endorsed this, this and approved the recommendation
8 for, gave the recommendation for approval on this particular
9 site as did staff in this regard as well. Specifically,
10 Nancy Sturgeon, who is the author of the, the principal
11 author of the North and West Silver Spring, testified to
12 that, to that effect as well.

13 Additionally, the housing element of the -- the
14 Montgomery County General Plan endorses sites such as this
15 recognizing that if the appropriate density is not placed
16 near transit, that it puts additional pressures on the
17 hinterlands, if you will, outside of, along the, in the
18 rural parts of the County to develop and certainly from a
19 smart growth standpoint, it makes a lot more sense to do it
20 in and around center cores and in particular, transit.

21 MR. HARRIS: I have no further questions. Thank
22 you.

23 MS. ROBESON: Mr. Brown, any recross?

24 MR. BROWN: Just a few if I might.

25 RE CROSS-EXAMINATION

1 BY MR. BROWN:

2 Q Mr. Iraola, you've identified some ways in which
3 an R-60 cluster development could differ from the type of
4 development proposed by the applicant in this case through
5 Mr. Harris' questions. My question is if this applicant
6 were committed to developing this type of townhome on this
7 type of property, he would be free, under the R-60 cluster
8 option, to create the kind of community that he is proposing
9 but with fewer units, isn't that correct? He wouldn't be
10 prohibited from doing so.

11 A He would not be prohibited, no.

12 Q Similarly, with respect to re-zoning to RT, there
13 are other options besides RT-15, isn't that correct?

14 A Yes.

15 Q RT-6, for example, would produce a density, after
16 accounting for MPDUs, it would be similar to what could be
17 achieved in the R-60 cluster with MPDUs, wouldn't it?

18 A I don't know. I haven't crunched the numbers on
19 that.

20 Q I beg your pardon?

21 A I have not crunched the numbers with regards to
22 that so I don't know.

23 Q Okay. And in that situation, the freedoms that
24 you've described as available to some other developer under
25 the R-60 cluster would be more constrained by the RT

1 standards, correct?

2 A Say that again. I'm sorry.

3 Q Well, you mentioned, for example, that the green
4 space in the R-60 cluster could be segregated and
5 desegregated among the various units in a way that might not
6 be acceptable tin the RT zones, is that right?

7 A It could.

8 Q But in an RT-6 or an RT-8, you could easily
9 develop this property along the lines that it's proposed at,
10 RT-15, just with fewer units, right?

11 A Possibly.

12 Q So the real gist of the argument in favor of RT-15
13 is that it produces more units.

14 A Yes. In appropriate locations, yes.

15 Q All right. Just one more thing. Going back to
16 this Exhibit 30A, as I understand your testimony about the
17 tradeoff, we're getting an additional five feet up here in
18 exchange for nine feet down here, and this is more, this is
19 better quality space than this space, right?

20 A Yes. That's correct.

21 Q Okay. Now, I also noticed that these rows of
22 townhomes on the north side are longer than the rows on the
23 south side.

24 A Yes. That's correct.

25 Q Right. If in fact you locked off a unit on each

1 one of these rows on the north side, you'd be down to 70
2 units, right?

3 A Seventy townhome units.

4 Q Yes, right?

5 A Yes.

6 Q In fact, if you locked off one unit on each one of
7 those northern rows, moved the road up slightly because of
8 that, you could actually achieve your full setback down here
9 and still have this setback on the north side, right?

10 A If you eliminated those?

11 Q Yes. Six units.

12 A Yes.

13 MR. BROWN: That's all I have. Thank you.

14 MS. ROBESON: All right. What we're going to do
15 then, I am going to excuse Mr. Iraola.

16 THE WITNESS: Thank you.

17 MS. ROBESON: And we will take 45 minutes for
18 lunch. If everybody could please be back at 12:05.

19 MS. SPIELBERG: 1:05? You said 12:05. 1:05?

20 MS. ROBESON: 1:05, yes. I'm sorry. If everyone
21 could please be back at 1:05, we will have Mr. Harris call
22 his next witness, okay? We're off the record.

23 (Whereupon, at 12:19 p.m., a luncheon recess was
24 taken.)

25 MS. ROBESON: We're back on the record. Mr.

1 Harris, I believe it is your witness.

2 MR. HARRIS: Yes. And consistent with the
3 discussion we had at the last hearing on the 26th and in an
4 effort to accommodate people from the community, some of the
5 supporting witnesses, three in particular, have come this
6 afternoon and I would like to have them have the opportunity
7 to speak now so that they can move on to their other
8 obligations.

9 MS. ROBESON: Do you have any objection?

10 MR. BROWN: We have at least six witnesses today
11 that have been waiting and hope to testify today because
12 they will not be available on the 30th.

13 MS. ROBESON: Okay. You have six and you have
14 three.

15 MR. HARRIS: Three I believe.

16 MS. ROBESON: Are yours, Mr. Brown, are yours
17 expert witnesses?

18 MR. BROWN: No, no.

19 MS. ROBESON: Okay. Then I think that we can
20 probably accommodate everyone, so do you have any issues
21 with taking Mr. Brown's witnesses today?

22 MR. HARRIS: No, I don't. One of my primary goals
23 from the outset has been to present the case but get it done
24 in a timely manner. We do have another day reserved on the
25 30th.

1 MS. ROBESON: Right.

2 MR. HARRIS: I certainly expect that if we put on
3 these witnesses today, that we'll be able to complete it on
4 the 30th. I would be curious to know, Mr. Brown, if you
5 know how many additional witnesses you might have then on
6 the 30th?

7 MS. ROBESON: Victoria, wait one minute.

8 MS. SPIELBERG: Can I just address it?

9 MS. ROBESON: Yes.

10 MS. SPIELBERG: Because I coordinated. There are
11 a number of people who came today who were also here last
12 week and there are six who, I think six of them, maybe some
13 others, who absolutely have to testify today but they've
14 been waiting multiple days to testify, and some of these
15 people weren't on the witness list. Some of --

16 MS. ROBESON: Some of what people, the people
17 that --

18 MS. SPIELBERG: I have to -- I have six who I know
19 cannot come back on the 30th and there are a number of other
20 people who are expecting to come and I need to check with
21 them because our understanding is we could go today. Some
22 of them came additionally on the 26th and so have been here,
23 are giving up several days.

24 MS. ROBESON: Well --

25 MS. SPIELBERG: There's some people who will just

1 come on the 30th because they couldn't be here today and
2 they understood they could be here on the 30th.

3 MS. ROBESON: I understand that. There's an order
4 of proceeding though and the order is that Mr. Harris gets
5 to present his case first. Then you get to present your
6 case and then Mr. Harris gets a rebuttal case.

7 MS. SPIELBERG: I understand. I just, I'm not --

8 MS. ROBESON: I just want you to know that it
9 would be -- now, I did say that we want to accommodate
10 people. Do all the people have different things to say
11 or --

12 MS. SPIELBERG: I believe so, and I don't know
13 that all of Mr. Harris' witnesses have had different things
14 to say either. And some of these, these people were not
15 identified as his witnesses and they're coming in now and
16 they weren't here on the 26th to testify so I think it's the
17 same issue for Mr. Harris as it is for us.

18 MS. ROBESON: I see what you're saying. How many
19 experts do you plan to call, Mr. Brown?

20 MR. BROWN: Well, we have two, the --

21 MS. ROBESON: Land planner.

22 MR. BROWN: -- land planner and Ms. Cirillo if
23 she's allowed.

24 MS. ROBESON: Mr. Harris, how many more do you
25 have?

1 MR. HARRIS: We have two experts, a --

2 MS. ROBESON: Traffic?

3 MR. HARRIS: An engineer, civil engineer, and the
4 traffic engineer.

5 MS. ROBESON: Okay. So we have four experts and
6 then the additional -- but you're saying that there are
7 additional people that may want to come and testify. Do we
8 still have the 27th open, June 27th?

9 MS. SPIELBERG: Can I, the one thing about that is
10 it is the same week and for some people, the problem is that
11 they have long scheduled vacations so people who couldn't
12 come on the 30th may well not be able to come on the 27th.
13 That was part of the reason.

14 MS. ROBESON: I thought the people who were not
15 able to come on the 30th were going to come today.

16 MS. SPIELBERG: Yes. They're trying to do that.
17 Yes.

18 MS. ROBESON: So --

19 MS. SPIELBERG: You're trying to get an additional
20 day. I understand.

21 MS. ROBESON: I'm just trying to get enough days
22 to accommodate as best we can everyone that wants to
23 testify.

24 MS. SPIELBERG: I appreciate that.

25 MS. VINCENT: June 27th is available. After that,

1 it will be October.

2 MS. ROBESON: Okay. Out of an abundance of
3 caution, Mr. Harris and Mr. Brown, are you available on June
4 27th?

5 MR. BROWN: I believe so.

6 MR. HARRIS: I believe so.

7 MS. ROBESON: What I would like to do, we don't,
8 you don't have to rearrange with your experts if they've
9 already made plans to be here on the 30th, but I would like
10 to add a day to make sure that we can get through the case
11 and have everyone testify that wishes to testify.

12 MS. SPIELBERG: I'm sorry to keep raising this
13 issue. I know that there's at least one person who I don't
14 think can be here on the 27th who is planning on coming on
15 the 30th because she had understood that --

16 MR. BROWN: But she's not dropping the 30th.

17 MS. SPIELBERG: No. I understand that but I just
18 didn't know if you were just, if you were assuming that on
19 the 30th, there would only be --

20 MS. ROBESON: No. I wasn't assuming that.

21 MS. SPIELBERG: Okay. Okay. The experts.

22 MS. ROBESON: I just want to make sure that we
23 have enough time to get the experts with cross-examination
24 in and all the citizens that want to testify, all right? Do
25 we have the 27th?

1 MS. VINCENT: The 27th, 9:30 a.m.

2 MS. ROBESON: Okay.

3 MR. HARRIS: Then --

4 MS. ROBESON: What I'm going to do is we'll take,
5 you know, I don't know if that changes how you want to
6 proceed right now. We can take the witnesses, both sides'
7 witnesses that are here that can't be here another day, and
8 then we're going to add in the 27th and we still have the
9 30th, okay? Are you available? I can't remember if I asked
10 you, Mr. Brown. Are you available on the 27th?

11 MR. BROWN: (No audible response.)

12 MS. ROBESON: Thank you. All right. Then what
13 we'll do today is take Mr. Harris' witnesses and then, Mr.
14 Brown, we'll take your witnesses that can't be here on the
15 27th or the 30th.

16 MR. BROWN: All right. I just want to be clear
17 that most of these folks are not, quote, my witnesses in
18 that I'm not representing them. They're citizens from the
19 community. Some of them are citizens from the community
20 that I haven't even spoken to that just want to appear in
21 opposition.

22 MS. ROBESON: Okay. Do you have any objection to
23 their appearing today?

24 MR. BROWN: Not at all, no.

25 MS. ROBESON: And then proceeding --

1 MR. BROWN: And I encourage it.

2 MS. ROBESON: -- as we just described?

3 MR. BROWN: Right.

4 MS. ROBESON: All right. I understand. Thanks
5 for the clarification, so we'll handle it that way. So, Mr.
6 Harris, since it is still your case, we'll start with your
7 witnesses and then we'll proceed to whoever wishes to
8 testify in opposition.

9 MR. HARRIS: Thank you. That's fine. Appreciate
10 it. You get the leg of the table.

11 MR. SLAGLE: I got the leg, yeah.

12 MR. HARRIS: Would you please state your name and
13 address for the record, please?

14 MR. SLAGLE: My name is Tom Slagle and I live at 2
15 Springvale Lane, Silver Spring, Maryland.

16 MS. ROBESON: Please raise your right hand.

17 (Witness sworn.)

18 MS. ROBESON: Okay. Proceed.

19 DIRECT EXAMINATION

20 BY MR. HARRIS:

21 Q Mr. Slagle, thank you for coming today. I
22 appreciate the time. It certainly takes an effort for a
23 community representative to come out and support a case that
24 is not in complete agreement in the community. Your time
25 here to speak as to why you support this.

1 A Well, thanks, sir. I appreciate it. I've lived
2 at Springvale Lane for probably 34 years. I've seen a lot
3 of changes through Silver Spring, agreed with some, didn't
4 agree with some. The present condition of the school
5 certainly isn't something we're happy with so we're, we're
6 looking for change and based on my knowledge of EYA's
7 project over in, what is it, Seminary Place, Seminary, and
8 just doing research on it and talking to people, come to the
9 conclusion that it's a good plan. It's something that my
10 wife and I are both behind.

11 I live on the corner, Springvale Lane and
12 Springvale Road, they've actually got my house here, so I
13 can see the, the whole property basically from my yard. And
14 we're pretty happy with the way the layout is currently with
15 a road going through from, from Ellsworth on up to Pershing
16 and the layout of the units as well. So, you know, we just
17 have decided that looks like a good way for this piece of
18 land to go.

19 MS. ROBESON: Okay.

20 MR. HARRIS: Okay. I have nothing further.

21 MS. ROBESON: Mr. Brown, do you have any
22 questions?

23 CROSS-EXAMINATION

24 BY MR. BROWN:

25 Q Mister --

1 MS. ROBESON: Slagle.

2 BY MR. BROWN:

3 Q Mr. Slagle, would you be any less enthusiastic
4 about this project if there were, say, approximately half as
5 many townhome units in it and it was otherwise laid out
6 pretty much the same?

7 A I haven't seen anything to date to take a look at
8 but density being the issue, you know, I'd have to really
9 see the layout and analyze, see what the houses are going to
10 sell for to see if they're really affordable, if you
11 downsize the population in there and increase the value of
12 the structures that are being built, if there's really a
13 market for it, so there's a -- I'd have to see a lot more
14 information to make that decision. To get return on an
15 investment, a builder just can't reduce the number of units
16 in half, build the same unit and expect to get his return on
17 investment so there will be some, have to be some changes to
18 the style of house, the value of the houses they build in
19 order to get their return so --

20 Q I understand. Thank you.

21 MS. ROBESON: Any redirect, Mr. Harris?

22 MR. HARRIS: No, thank you.

23 MS. ROBESON: Okay.

24 MR. HARRIS: Thank you very much for coming.

25 MS. ROBESON: Thank you for coming.

1 THE WITNESS: Okay.

2 MR. HARRIS: I appreciate it.

3 MS. ROBESON: You can be excused.

4 THE WITNESS: Thank you.

5 MR. HARRIS: And, Mr. Posner. Yes. I was drawing
6 blank for a moment there. Would you state your name and
7 address for the record?

8 MR. POSNER: Mark Posner, 709 Woodside Parkway,
9 Silver Spring.

10 MS. ROBESON: Please raise your right hand.

11 (Witness sworn.)

12 MS. ROBESON: Thank you.

13 DIRECT EXAMINATION

14 THE WITNESS: I have a somewhat more formal
15 presentation that I have typed up so I'm going to go ahead
16 and read that.

17 MS. ROBESON: Okay.

18 THE WITNESS: So I think it's understood that I am
19 testifying here today in support of EYA's zoning
20 application. I would like to begin with just a little bit
21 of background information as to who I am and how I fit into
22 the present discussion. I've lived with my wife and kids at
23 the 709 Woodside Parkway address since July 1987, so that's
24 almost exactly 24 years. Our three kids have attended the
25 local Montgomery County schools. I'm a lawyer. I practice

1 in the area of voting rights law. My wife is a social
2 worker and is co-director of the bereavement program at Holy
3 Cross Hospice.

4 Like my neighbors sitting in the audience today, I
5 feel very lucky and blessed to live where I do. Our
6 neighborhood is one where people know each other and help
7 each other out in times of need. Indeed, my family has been
8 a particular beneficiary of this community spirit. Back in
9 January 1996, my youngest was due to arrive in the midst of
10 back to back blizzards and several neighbors pitched in and
11 shoveled the street while another drove us in his four-wheel
12 drive to GW Hospital.

13 My neighborhood also is special because of its
14 blend of urban and suburban amenities. My neighbors and I
15 can walk to many things and are not totally dependent on our
16 cars. For example, every work day, I walk a mile to the
17 Silver Spring Metro Station and take the train to my office
18 in D.C. Notwithstanding its urban character, the
19 neighborhood streets are quiet. There are many tall trees
20 and I can sit on my front porch and enjoy a peaceful summer
21 evening. The only problem is the mosquitos but I don't
22 think that the EYA project will affect that.

23 I am a strong believer in community and
24 contributing to the communities of which I am a part. I've
25 served as president of the Jewish Congregation to which my

1 family belongs. I serve as treasurer for a Silver Spring
2 Community organization known as Old Blair Auditorium
3 Project. I also have been a member of SOECA for many years.
4 My family contributes in a small way by taking
5 responsibility for distributing the SOECA monthly newsletter
6 to other residents of my block.

7 More pertinent now to this hearing, I served on
8 the SOECA task force that met in the late spring and early
9 summer last year to investigate the facts relating to EYA's
10 Chelsea property proposal. In the fall when SOECA held a
11 meeting to discuss and vote on this project, I made a
12 presentation in support of the project to the assembled
13 SOECA members.

14 After that meeting, at which SOECA voted to oppose
15 EYA's proposal, I thought it important for community members
16 to continue to talk with EYA and take EYA up on its offer to
17 work closely with us to design a development that will
18 integrate well into the existing community. I therefore
19 organized, along with my wife, a meeting at my house with
20 EYA in October of last year to discuss the townhouse
21 proposal.

22 The meeting was open to all. I invited attendance
23 by sending a message over the SOECA list serv. The
24 neighbors who attended the meeting had a range of opinions.
25 Some were strong supporters, others were on the fence and

1 were looking for more information and at least one was a
2 strong opponent. My wife and I subsequently organized a
3 followup meeting with EYA in January of this year at which
4 EYA reported back on its consideration of the feedback it
5 had received.

6 It is important to note that as a result of these
7 meetings, EYA decided to make a significant change to its
8 proposed site plan. That change involved a reconfiguration
9 of the planned townhouses to move them back away from
10 Springvale so as to create I think what is called a linear
11 park along Springvale as a buffer between the new
12 development and the existing houses across the street.

13 Turning now to the evaluation of the EYA proposal,
14 I begin, like many of my neighbors, with the question of how
15 is this project going to impact my neighborhood. For the
16 following reasons, I believe that it will be beneficial.

17 The first factor I believe is important to
18 consider is the location. The project, as you know, is to
19 be located on the edge of our community immediately adjacent
20 to the central business district. Because of this and also
21 because of the existing traffic restrictions which EYA has
22 pledged to respect and maintain, much of the traffic from
23 the townhouses will flow almost directly in and out through
24 Cedar Street and will not intrude on the neighborhood. I've
25 heard some concern about the possible impact on Pershing.

1 However, this concern, I think, should be addressed and can
2 be addressed later in the development process by considering
3 potential traffic control measures.

4 The project, of course, also will be located
5 within easy walking distance to downtown Silver Spring and
6 the Silver Spring Metro stop as well as near the planned
7 purple line. Accordingly, many of the new residents will
8 walk and use public transportation, not their cars, to run
9 errands, enjoy entertainment and travel into D.C.

10 Location I think also is an important
11 consideration in evaluating the proposed density. Since the
12 Chelsea property is next to the CBD, across the street from
13 a large apartment building and across the street from the
14 Springvale Assisted Living Facility, I believe that a
15 townhouse project at this particular location will provide
16 an appropriate level of density that will fit well with
17 existing uses.

18 A second consideration, I think, besides location
19 is the size and design of the proposed development. This,
20 again, is important in considering traffic and density. With
21 respect to traffic, it is my belief that a project of this
22 size, in the context of the location factors that I just
23 discussed, will have only a modest and insignificant effect
24 on my neighborhood streets.

25 In this regard, I think it is helpful to look at

1 the affect that other development projects in my
2 neighborhood right down the street from Chelsea property
3 have had on traffic. In the past 20 years, 33 new houses
4 have been built in and around Ellsworth Street and Woodside
5 Parkway. My observation from living on Woodside Parkway,
6 three houses from Ellsworth, is that these houses together
7 have produced barely a ripple in the neighborhood traffic.

8 The EYA project is somewhat over two times larger
9 and so likely, will generate somewhat more traffic.
10 However, with regard to its overall impact, one has to
11 consider that it will replace an existing use that itself is
12 a traffic generator which is not what occurred with regard
13 to the other new houses built nearby. Considering all this,
14 I do not expect that the EYA Project will have a detrimental
15 effect, a detrimental effect on neighborhood traffic.

16 With regard to density, I believe that the
17 proposed design will allow the project to integrate well
18 into the existing community. The townhouses will be of a
19 similar height and design as the existing houses, be well-
20 constructed and will be surrounded by ample green space.

21 The size and design of the proposed project also
22 is relevant in considering its impact on the social life of
23 my neighborhood. Here, again, I believe that the project
24 will have a positive effect. Having a development opposite
25 the park should make that stretch of Ellsworth less crime-

1 prone. Creating green space on Pershing across from the
2 Springvale Assisted Living Facility will give the residents
3 of that facility a place to sit outside and enjoy the
4 outdoors. And the townhouses will be arranged in a
5 relatively open manner which should encourage new and
6 current residents to mingle and make new friends.

7 In addition to considering the impact of the
8 project on my neighborhood, I also believe it is important
9 to consider whether the project will be beneficial for
10 Montgomery County as a whole. In this regard, I think it is
11 clear that the project will be a home run. Given the very,
12 very serious environmental challenges we are facing, it is
13 crucial that our County be guided by principles of smart
14 growth in planning future residential construction in the
15 County. The Chelsea property, located as it is next to the
16 downtown area and within walking distance to the subway,
17 presents an excellent opportunity for us to do this.

18 In sum, I believe that the proposed EYA project is
19 a win-win. It is a win for my neighborhood and it is a win
20 for Montgomery County as a whole. Therefore, I support
21 EYA's application for re-zoning and its proposal to
22 construct townhouses on the Chelsea property.

23 MR. HARRIS: Thank you very much, Mr. Posner. I
24 have no other questions.

25 MS. ROBESON: Okay. Mr. Brown, any cross-

1 examination?

2 CROSS-EXAMINATION

3 BY MR. BROWN:

4 Q Mr. Posner, you heard the question I asked Mr.
5 Slabin (phonetic sp.), Slagle, I'm sorry. Did you?

6 A Well, I think I pretty much have the same answer.
7 I mean, it's kind of a hypothetical question and I really
8 would have to examine an actual plan, something that is a
9 real plan that someone is actually proposing to build before
10 venturing an opinion.

11 Q Can you think of any aspects of your positive
12 attributes of this plan that would be negatively impacted if
13 it were reduced in scale by 10, 20 or 30 units but
14 otherwise, pretty much stayed the same?

15 A Well, you're sort of asking the same question, you
16 know, with different words and again, you're proposing a
17 hypothetical to me that I -- I mean, certainly, I think that
18 the plan is appropriate, I think it's appropriate for my
19 neighborhood and I think it's a good plan in terms of smart
20 growth.

21 I mean, I've written, I've written to the, to I
22 think it was the Planning Board to say I didn't think it
23 would be a good idea to build an apartment building there so
24 I don't think that that kind of proposal would be
25 appropriate but, you know, that's much, much too dense and

1 not appropriate development there but, you know, beyond
2 that, I think that the current proposal is appropriate and
3 good.

4 MR. BROWN: No further questions.

5 MR. HARRIS: Okay. Thank you very much, Mr.
6 Posner. I appreciate it.

7 MS. ROBESON: Thank you.

8 MR. HARRIS: And then this gentleman, Townsend?

9 MR. TOWNSEND: Yes.

10 MR. HARRIS: Yes. Thank you. Mr. Townsend, would
11 you state your name and your address for the record?

12 MR. TOWNSEND: Yes. Wardell Townsend, 8908
13 Ellsworth Court in Silver Spring, Maryland.

14 MS. ROBESON: Okay. Can you raise your right
15 hand, please?

16 (Witness sworn.)

17 MS. ROBESON: Okay.

18 DIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q Mr. Townsend, go ahead and tell us why you're
21 here.

22 A All right. If I may read just a brief statement.
23 I did keep it brief in light of the amount of time that I
24 would be allowed. My name, as I stated, my name is Wardell
25 Townsend. I'm here on behalf of myself and my wife, Diane

1 Martin, to speak in support of EYA's Chelsea Court
2 development project. And as I indicated, I will keep my
3 remarks brief.

4 Diane and I are members of SOECA, having lived at
5 the address stated now for about 20 years, and our property
6 line is about 300 yards from the proposed site. We've
7 raised our four children in the neighborhood and we've seen
8 many changes that have made the community more diverse,
9 accessible, enriching and economically sustainable. Some
10 proposals that came forward to the community I did not like,
11 some I did like and I believe on balance, things are moving
12 in a very positive direction and I'm very pleased, as well
13 as my wife is pleased, that the Silver Spring central
14 business district has become more enlivened with development
15 which was needed.

16 Myself, as a former housing development manager
17 and a community development director at the County level, I
18 know that land use issues have always been at the decision,
19 at the center of decision-making. The most critical aspect
20 of land use is the community's best use of a limited
21 resource and the essential need to accommodate the best use
22 for generations. In the case of EYA's Chelsea Court
23 project, I believe the land use at that site, the current
24 use of the land has exhausted its practical use in terms of
25 its locality and proximity to other development and the

1 neighborhood. A major investment of some kind would be
2 warranted, I believe, for the best use of that land.

3 I believe the proposed 76 townhomes at the Chelsea
4 School site can easily be accommodated by the community in
5 every regard. In fact, by and large, I believe they are
6 desired by the community and the, EYA's proposal appears to
7 reflect high standards of design, environmental balance and
8 human appeal. I am pleased to reiterate my support for the
9 Chelsea Court project as proposed by EYA and support the re-
10 zoning request.

11 MS. ROBESON: Thank you.

12 MR. HARRIS: Thank you very much, Mr. Townsend. I
13 have no other questions.

14 MS. ROBESON: Mr. Brown?

15 MR. BROWN: Just a moment, please.

16 CROSS-EXAMINATION

17 BY MR. BROWN:

18 Q Mr. Townsend, could you point out on here where
19 you own property, please?

20 MR. BROWN: This is Exhibit 123.

21 THE WITNESS: We're over here.

22 MS. ROBESON: Can you just describe where you're
23 pointing?

24 THE WITNESS: I'm pointing --

25 MS. ROBESON: Are you at an --

1 THE WITNESS: Pardon?

2 MS. ROBESON: Go ahead.

3 THE WITNESS: I'm pointing to the house on
4 Ellsworth Court. It would be the third house on the left
5 going into the court.

6 MS. ROBESON: On the south side of the court?

7 THE WITNESS: On -- well, I guess it would be west
8 actually. It might be --

9 MR. HARRIS: Southwest, yes.

10 THE WITNESS: Is that southwest? Yeah.

11 MS. ROBESON: Okay.

12 BY MR. BROWN:

13 Q That house is not a house directly confronting
14 across the street from the development, is it?

15 A No.

16 MR. BROWN: Nothing further.

17 MS. ROBESON: Okay. Anything else, Mr. Harris?

18 MR. HARRIS: No. Thank you very much for coming.

19 I appreciate your time very much. Okay. I think those
20 were the only witnesses we had.

21 MS. ROBESON: Okay. Mr. Brown?

22 MR. BROWN: Mr. Brown or --

23 MR. BROWN: We're going to start with Ms.
24 Spielberg.

25 MS. ROBESON: Okay. You need to get sworn.

1 MS. ROBESON: Please raise your right hand.

2 (Witness sworn.)

3 MS. ROBESON: Okay. Go ahead, Mr. Brown.

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Ms. Spielberg, would you give us your name,
7 address and personal and professional background, please?

8 A My name is Anne Spielberg. I live at 606
9 Greenbrier Drive. I've lived there for 18 years with my
10 husband and my two children, and my home is located just a
11 couple of blocks from the site of the proposed Chelsea Court
12 development. Professionally, I'm an attorney and I've been
13 in practice for approximately 25 years doing nonprofit
14 advice and general counsel work.

15 Q What has been your role in the SOECA with regard
16 to development, proposed development of the Chelsea School
17 site?

18 A Well, since I moved to Silver Spring 18 years ago,
19 I've been a member of the Seven Oaks-Evanswood Citizens
20 Association and for the last year, I've headed the Seven
21 Oaks-Evanswood Citizens Association Task Force on the
22 redevelopment of the Chelsea School property.

23 Q Would you describe the process that your task
24 force went through in reviewing the application?

25 A In April and May of 2010, EYA first presented its

1 proposed development proposal on the Chelsea School property
2 and its plan to file for a re-zoning to our civic
3 association and they, they came to us indicating that they
4 were planning to re-zone from the existing R-60 zoning to
5 RT-15, the highest density townhouse zoning. During the
6 course of those two meetings, the community association
7 spent more than five hours considering EYA's proposal and
8 asking them questions and talking to them.

9 At the May meeting, those attending passed a
10 resolution which expressed their concern about changing the
11 zoning on our site from R-60 to RT-15 because of the density
12 that was being proposed, because of the elimination of Cedar
13 Street, which is the boundary between our neighborhood and
14 the central business district, and because of the potential
15 presidential effect and what it would mean for other
16 properties potentially in our neighborhood.

17 So we had concerns, but we formed a task force to
18 look into the proposal to learn about the process and its
19 timing and to evaluate and review it and then to make
20 reports and recommendations to the membership and Executive
21 Committee. And it also authorized the Executive Committee
22 to act over the summer, since there would be no civic
23 association meetings over the summer, in case there was a
24 need. There was a task force of 10 volunteers and I was
25 appointed the Chair by SOECA's former president at the time,

1 Mark Gabriel.

2 Then during the spring and the summer, the task
3 force met, we gathered information, we looked at the
4 proposal, we met again with EYA, we received additional
5 information from them and communications, we talked to staff
6 at Park and Planning and others knowledgeable about zoning,
7 a task force member met with the head of the Chelsea School,
8 people on the task force looked at other development
9 records, looked at public records and generally, just tried
10 to assess what this would mean for our community.

11 At the request of SOECA's Executive Committee, we
12 conducted a poll of the nearby neighbors who live on the
13 streets most directly affected, Springvale Road and Lane and
14 Pershing and Ellsworth Drive in the area near the property.

15 Of the 66 houses we polled, we heard from 55 percent, or
16 36, which, given it was July, was a good response rate we
17 felt, and of those who responded, 94 percent, or 34, were
18 opposed to the re-zoning while 2 were not ready to express
19 their position.

20 Based on all of this review that we did, the task
21 force recommended that the existing zoning of the site be
22 preserved and that we oppose the changing that, change in
23 zoning that was being proposed to RT-15, the highest density
24 townhouse zoning. We then presented that recommendation to
25 our Executive Committee in July because EYA had asked for a

1 response from us prior to a date in July where they had to
2 make some decisions about going forward with the property
3 and they wanted to know what our position was.

4 The Executive Committee then endorsed our
5 recommendation and communicated that to EYA and then at the
6 first civic association meeting after the summer, we had a
7 meeting and a vote on our recommendation, and it was a very
8 well-attended meeting for our civic association, and the
9 vote was 3 to 1 to preserve and uphold our existing zoning.

10 Q When you say 3 to 1, it wasn't four people, was
11 it?

12 A No. It was about, it was about a total of 55 and
13 the vote was 41 to 14. And for us, that was, that was a
14 large meeting. I would note that also as part of the
15 process that SOECA has taken, we did seek the advice and
16 support of the Montgomery County Civic Federation, and the
17 Executive Committee of that Federation voted unanimously to
18 oppose the application to change the zoning and they
19 submitted testimony at the Planning Board on May 19th to
20 that effect.

21 Since that vote, we have talked with our
22 neighbors, and not only those immediately abutting the
23 property surrounding it but well over 200 nearby residents
24 have authorized us to say that they oppose the proposed re-
25 zoning based on the detrimental impact to our neighborhood

1 and the concern about inserting a high-density development
2 in the interior and behind Cedar Street and behind the Cedar
3 Street homes.

4 Q So could you describe in more specific terms the
5 reasons for you deciding to oppose the re-zoning?

6 A The concern of our community is that changing the
7 zoning to RT-15, the highest density zoning, is not
8 consistent with our current master plan, it's not
9 appropriate given the density of the zoning that surrounds
10 the property and it is not a buffer given that it will sit
11 immediately behind an existing low-density buffer of single-
12 family houses that already sits on Cedar Street.

13 Q Do you want to do the picture now or later?

14 A I think -- I could do it whichever.

15 Q What?

16 A Either way would be fine.

17 Q You tell me when.

18 A Okay. I will. First, in terms of the master
19 plan, we think it's very clear that R-60 is the appropriate
20 zoning for the area and that the master plan says the goal
21 is to protect the integrity of our community, to maintain,
22 preserve and enhance the existing neighborhoods and to do
23 so, as the master plan says, we have to protect and
24 stabilize the edges. Even if the language in the master
25 plan is not binding and it's only guidance, what the master

1 plan provides shows how re-zoning to RT-15 is not an
2 appropriate density and does not provide our neighborhood
3 with the transition between lower density in R-60 and more
4 intense development in the CBD or elsewhere.

5 The master plan unambiguously reconfirms the
6 existing zoning within North Silver Spring except as
7 otherwise specifically recommended. In reconfirming the
8 existing zoning, it talks about, it confirms the density and
9 that's specifically stated in the master plan at page 21.
10 This is the plain language of the plan and what our
11 community residents rely on. I'm looking at where they're
12 going to live in our community and what is going to be near
13 them.

14 The zoning of the Chelsea School site is confirmed
15 as R-60 at a density of 6 per acre and in our master plan,
16 the only recommendation for possible townhouse redevelopment
17 is along Georgia Avenue. Georgia Avenue is the sole
18 recommendation for a change to townhouses from existing
19 residential zoning which otherwise is supposed to be
20 preserved. And even along Georgia Avenue, which is
21 categorized as a major highway in the master plan, the
22 master plan directs that the townhouse development should be
23 limited, and I quote, "to the blocks along Georgia Avenue
24 and not encroach into the interior blocks.@ That's at page
25 21.

1 This proposed development would not be built along
2 Georgia Avenue, it would not be built along any major
3 highway, any arterial road or any primary residential
4 street. Instead, it would be built on interior blocks
5 contrary to both the specific language and the intent of the
6 master plan. It makes no sense to say that along a major
7 highway, the interior neighborhoods must be protected but
8 not elsewhere in North Silver Spring.

9 And in fact, the current master plan talking about
10 this part of our neighborhood also is clear about the
11 concern to protect the interior. In our master plan,
12 townhouse zoning was chosen as one method of creating a
13 transition or buffer between those properties in North
14 Silver Spring fronting on major streets or the central
15 business district and the interior of those neighborhoods.
16 Townhouses are recommended along Georgia Avenue when
17 previously, in the 1978 master plan, there were
18 recommendations for nonresidential professional offices and
19 that was supposed to be the transition then.

20 On Cedar Street where we're talking about, by
21 contrast, the current master plan keeps the R-60 special
22 exception for nonresidential offices with the County Council
23 specifically finding that the approach of that, of the
24 special exception under R-60, best reflects how to preserve
25 residential character and stabilize the edges while

1 protecting the interior of the neighborhoods, and that's
2 stated at, in the master plan at page 20.

3 The master plan continued the strategy of the 1978
4 Silver Spring Master Plan to use as a buffer between the
5 neighborhood and the central business district the row of
6 single-family houses along Cedar Street between Ellsworth
7 and Pershing Drive that are available for nonresident
8 professional office use as a special exception. There is no
9 intent in the master plan and no need or suggestion that
10 there should be, effectively, a double buffer by putting
11 townhouses, one method of protecting vulnerable edges which
12 is used on Georgia Avenue, behind another existing buffer,
13 the houses that can be used as nonresident special
14 exceptions. That does not protect the interior of the
15 neighborhood. It attacks it. Especially when the buffer
16 further away from the central business district is at an
17 increased density.

18 Q Have you looked at the area around this subject
19 property in terms of density to evaluate the appropriateness
20 of the proposed density?

21 A Yes. The task force did look at that and I would
22 like to --

23 Q What is this document?

24 A This document is an aerial view of the property
25 and the surrounding area. It was taken using Google Earth.

1 And then the zoning for the property was indicated on, on
2 top, and the property itself is outlined in green.

3 MS. ROBESON: Okay. I'm going to mark this as
4 151, aerial of neighborhood.

5 (Exhibit No. 151 was marked for
6 identification.)

7 MS. ROBESON: Mr. Harris, do you have any
8 objections?

9 MR. HARRIS: Only that it's, in terms of
10 neighborhood, it is not the zoning neighborhood so it's, I
11 would, perhaps we should say that it's an aerial of areas
12 surrounding the subject site.

13 MS. ROBESON: All right.

14 MR. BROWN: No objection to that.

15 MS. ROBESON: Okay.

16 (Exhibit No. 151 was received into
17 evidence.)

18 MS. ROBESON: Go ahead.

19 THE WITNESS: Okay. So --

20 BY MR. BROWN:

21 Q Would you describe the photograph related to your
22 concerns about density?

23 A Okay. So on the exhibit, the site is marked with
24 a green line and it's, as indicated, it is currently zoned
25 R-60. And what the exhibit shows is that on three sides,

1 there are, the site is bounded by R-60 detached homes at a
2 density of 6 per acre. They sit across from the property at
3 the north on Springvale Road, they sit to the east, east of
4 the property along Pershing, and both of those are cross
5 streets but directly abutting the property without any
6 intervening street are the houses along Cedar Street which
7 are also zoned R-60 at a density of 6 per acre.

8 Those houses along Cedar Street, as Mr. Iraola
9 indicated, there are only four of them that are currently
10 being used as special exception nonresidential office and
11 special exceptions. Five of those continue to be used as
12 homes. And I have reviewed the records of each of those
13 special exceptions and each of them reflects the importance
14 of maintaining the existing residential structures with few,
15 if any, changes to the exterior and with an emphasis that
16 parking would be provided in the central business district
17 so that, to retain the landscaping and the residential
18 driveways.

19 The fourth side of the property along the west, it
20 borders Ellsworth Drive and faces the current Silver Spring
21 Library which is indicated on the, on the exhibit, which is
22 also zoned R-60, and is in keeping with the surrounding
23 existing R-60 neighborhood.

24 I think it's clear that the property does not in
25 any way front on the central business district. It is

1 bounded and accessed by interior neighborhood streets.

2 Unlike Georgia Avenue, it's not a major highway, it's not an
3 arterial road, it's not a primary residential street. It
4 doesn't sit on any part of it.

5 It cannot be considered part of the central
6 business district and the density of development in the
7 central business district across Cedar Street cannot be used
8 to push that level of density into our neighborhood when it
9 was supposed to be kept in the central business district
10 whose character was supposed to be protected. It's
11 illogical. It's not needed to place this high-density
12 buffer at an intense density and massing of 76 behind a low-
13 density buffer of nine homes that must retain their detached
14 single-family structures.

15 In addition, as the Hearing Examiner pointed out
16 at our hearing on May 26th, allowing the re-zoning to occur
17 and push RT-15 interior to the neighborhood, it would cut
18 off the homes that are on Pershing, that it's also bounded
19 by Springvale, Wayne and Cedar. Instead of having R-60
20 zoning on Pershing abutting R-60 zoning on this property, we
21 would have zoning of RT-15 with blocks of townhouses
22 abutting that row of houses. And that corner also fronts on
23 the CBD and also needs to be protected, and allowing that
24 change lops off a whole block.

25 Mr. Iraola testified that there was a special

1 exception at the corner of Pershing and Cedar at 722
2 Pershing but in looking at the zoning records, it was an
3 accessory apartment in '86 and it was revoked in '88. All
4 of those properties are single-family homes along there.

5 There is one other special exception use nearby
6 which is the Springvale Retirement Center, also indicated on
7 the exhibit. It's two story. It is a low-impact quiet use
8 with little traffic, cars or noise. There are some
9 residents who are independent living and others in assisted
10 living. They live in studio and one-bedroom units. The
11 property does not abut the Chelsea School property. It has
12 one corner that is across from it and it's inappropriate to
13 boot-strap off of it a density that's in a permitted, it's
14 permitted as a special exception to change the zoning of
15 this property.

16 Other recent development within our community has
17 allowed new development but done so consistent with R-60
18 zoning. There is the Ellsworth Court property that we just
19 heard about. That was kept as R-60 and homes came in, into
20 our neighborhood and that's consistent. Additionally, the
21 master plan talks about the Watts property which again, was
22 developed within an R-60 cluster which is consistent with
23 the R-60 zoning which is throughout our neighborhood.

24 The only nearby property on the north side of
25 Cedar Street that is not R-60 is Colesville Towers which

1 appears on the corner of Colesville Road and Springvale to
2 the west of the property. That building was built in the
3 1960s well before the existing and the previous master plan.
4 As I said, it sits on the corner of Colesville Road and
5 Cedar Street. It faces other commercial development. It
6 actually lines up with the buffer houses that already exist
7 on Cedar Street. There's only a tiny point that in any way
8 can be said to be opposite the Chelsea School property. In
9 fact, there's a triangle of land as seen on the, on the
10 exhibit, which is R-60 which is closer to the Chelsea Court
11 property.

12 The access for Colesville Towers is off of
13 Colesville Road. It is not on neighborhood streets. There
14 is no entrance along Ellsworth Drive as Mr. Iraola
15 testified. You only get to it from Colesville Road. It is
16 an outlier in an otherwise R-60 community. The neighbors
17 worked in the last two master plans to protect the integrity
18 of our community, to stabilize the edges and prevent that
19 type of encroachment and high level of density. It cannot
20 be used now to go in the opposite direction and cause an up-
21 zoning in this property.

22 I also would like to draw your attention to the
23 fact that if we look on the diagonal of the property, going
24 from Pershing and Cedar through the property across to the
25 park, that the, looking on that diagonal, the appropriate

1 density goes from R-60 at 6 per acre through the property,
2 which is still 6 per acre, over to a park, which has no
3 density per acre, and that property has long been used as a
4 park. And that diagonal is just as relevant as going in the
5 other direction from the outlier apartment building which
6 shouldn't be used to up-zone through the property to a
7 special exception which is still in the R-60 neighborhood.
8 So I think you have to look at both diagonals and look in
9 front of the property which is all R-60.

10 Q Looking at the particulars of the configuration of
11 the townhomes on the property, do you have a concern about
12 the density of the development?

13 A Yes. I'm very concerned about the density. It
14 is, the property, the planned development basically packs
15 the site in every way that it can. It cuts into the setting
16 of the historic property. It comes very close, even if you
17 keep the, just the slightly less than one acre environmental
18 setting that is, that was approved only for the Chelsea
19 School, it comes very close to the house. It's cut off with
20 a row.

21 It's notable the applicant hasn't made any binding
22 element that protects the historic setting of the property,
23 just the building itself, and the setting is very important.
24 And if the property is on the parcel as it was originally
25 approved, I'm sorry, the parcel that the house was

1 originally on, the 1.4 acres, it cuts into that even
2 further. It doesn't meet the setbacks along Cedar Street.
3 Its green area is not 50 percent as it would be required for
4 RT zoning at a lower density.

5 It would be the only townhouse property in all of
6 North Silver Spring that was zoned RT-15, the highest
7 density townhouse zoning. No other one, even along the
8 major roads of Georgia Avenue or 16th Street, is zoned at
9 that density. The Fairview townhouse property that Mr.
10 Iraola spoke of predates the 2000 master plan and in
11 addition, it directly abuts, directly abuts a commercial, a
12 property that's zoned CO.

13 Q Is that shown in the master plan?

14 A And that is shown at the master plan on page 36.
15 There are, there are three townhouse communities in Woodside
16 Park and combined, they do not have as many units as this
17 one. They're all actual buffers and are not dumping onto
18 interior streets. One example on Georgia Avenue is the 23
19 townhouses and three single-family homes at Georgia and
20 Noyes. It sits on 2.7 acres for a density of 9.7 acre, per
21 acre.

22 The proposed development has numerous units packed
23 in. Almost half of them, 36, are only 14 feet to 16 feet
24 wide, not 20 feet, so that two-car garages are going to be
25 difficult. The usual two-car garage is 20 feet and if the

1 garages are not large enough for two cars, then those cars
2 will be spilling over onto our neighborhood streets.

3 The Department of Housing and Community Affairs
4 Housing Office has said that the current proposed size of
5 the proposed MPDUs, the smaller units, would need to be four
6 stories high, not three stories, and that's in the Staff
7 Report, and that's necessary to include the required three
8 bedrooms. The massing is very large, well beyond the
9 surrounding R-60 properties.

10 Q Mr. Iraola also addressed compatibility with the
11 neighborhood extensively. Do you nonetheless continue to
12 have concerns about compatibility?

13 A I do. I don't believe this up-zoning, this is
14 compatible with the existing neighborhood or the surrounding
15 properties or the R-60 zoning. We are a community that is
16 near the Silver Spring Central Business District. We are
17 under sustained pressure from that development. However, in
18 both the master plan for our area as well as the one for the
19 central business district, the Cedar Street is clearly the
20 dividing line between our neighborhood and the CBD. It has
21 been that way for decades. There has been a tradeoff of
22 intensive high-density in the central business district,
23 including for residential units, while our community's
24 density was to remain at its current existing level of R-60.

25 Re-zoning this property to increase the density as

1 proposed would overturn decades of planning that kept
2 development on our community side of Cedar consistent with
3 the surrounding R-60 zoning. It is pushing that development
4 that was supposed to occur in the CBD, including
5 residential, beyond the borders that exist. It fails to
6 protect the edges or stabilize the neighborhood as it was
7 intended and planting, in our midst, an incursion that is
8 inappropriate and incompatible because of massing and
9 density.

10 I strongly urge that this proposed re-zoning be
11 rejected. Allowing it here as supposedly meeting the zoning
12 requirements means that numerous parcels within our
13 community can similarly be re-zoned such as the Springvale
14 Terrace property, the houses now on Cedar Street that are
15 the buffer and the block of homes bordered by Wayne, Cedar,
16 Pershing and Springvale. Such a conclusion is completely at
17 odds with the purposes of the RT zone and with our master
18 plan and it will be destructive, destabilizing to our
19 community and it's unnecessary given the available level of
20 development that could occur under existing R-60.

21 Q Thank you, Ms. Spielberg.

22 MS. ROBESON: Okay. Before -- I just had a few
23 questions and then you can cross on my questions. I asked
24 Mr. Iraola this and I'll ask you the same question. What is
25 your definition of the edges of the neighborhood?

1 THE WITNESS: The edges?

2 MS. ROBESON: Yes.

3 THE WITNESS: It's the border along Cedar
4 Street --

5 MS. ROBESON: Yes.

6 THE WITNESS: -- along the central business
7 district.

8 MS. ROBESON: But what about --

9 THE WITNESS: In terms of how the surrounding area
10 should be defined, is that your --

11 MS. ROBESON: No. The master plan says to
12 stabilize the edges of the neighborhood.

13 THE WITNESS: Yes.

14 MS. ROBESON: So is it just that edge are you
15 saying it's referring to or --

16 THE WITNESS: I think that edge, in terms of this
17 particular property, I don't think that's the only edge
18 that's supposed to be protected in our neighborhood but I
19 think in terms of what's going on here, it very much was
20 talking about the line with the central business district.

21 I mean, our community is under pressure from many
22 edges. We are a community that's very near the central
23 business district and a lot of other development, you know,
24 we have both the benefit and the burden of being near Metro
25 and all of those things but I think it's very clear that

1 that line that's shown of the central business district is a
2 border that needs to be protected. We do border --
3 Colesville Road is another line, is an edge of our
4 neighborhood.

5 MS. ROBESON: What about on the eastern side?

6 THE WITNESS: In terms of Wayne Avenue?

7 MS. ROBESON: Yes.

8 THE WITNESS: Well, Wayne Avenue is going to be an
9 area, again, that's going to be pushing development into our
10 neighborhood. It is, it is slated for an at-surface purple
11 line. The rail is supposed to go right down there, and so
12 there will be pressure being pushed on that corner that we
13 talked about that's also being pushed from the central
14 business district and along that whole edge. Yes. That's
15 an edge that is vulnerable as well and we've had concerns
16 there as well.

17 MS. ROBESON: And is it your position that, is
18 your position that there should be no townhouses or is it
19 your position that the density of these townhouses, that --

20 THE WITNESS: Our position is we have R-60 zoning.
21 What's allowed consistent with R-60 zoning and the
22 requirements in the Code for R-60 zoning is what can go
23 there, and our understanding is that townhouses can go there
24 under certain conditions and we live with that basically and
25 so it's not, it's not about townhouses. It's about the

1 density is inappropriate, it's inappropriate to up-zone the
2 area, we're trying to protect that. But, you know, R-60 has
3 different elements and we understand that.

4 MS. ROBESON: Okay. Mr. Harris?

5 MR. HARRIS: Yes.

6 CROSS-EXAMINATION

7 BY MR. HARRIS:

8 Q Could you do me a favor and approach Exhibit 123,
9 Ms. Spielberg, and show me where your home is, please?
10 Excuse me.

11 A It's approximately -- I think it's that. It's
12 either this one or that.

13 Q Okay. So along what's that, Greenbrier, just
14 south of Woodside Parkway?

15 A No. It's actually south. It's just, it's just
16 past the intersection with Mayfair Place.

17 Q Okay. So --

18 MS. ROBESON: Past north or past south?

19 THE WITNESS: Past south.

20 MS. ROBESON: Okay.

21 THE WITNESS: No, no. I'm sorry. That's north.

22 MS. ROBESON: Past north.

23 THE WITNESS: Past north.

24 MS. ROBESON: Okay.

25 THE WITNESS: Just north.

1 MS. ROBESON: Across the street.

2 THE WITNESS: Across the street.

3 MS. ROBESON: All right.

4 THE WITNESS: Over here, and I just can't quite
5 tell which of these. It probably is this. I'm sorry, it's
6 this one. There's one that's directly opposite Mayfair
7 Place and we're the one just to the north of that.

8 MS. ROBESON: Okay.

9 BY MR. HARRIS:

10 Q Okay. All right. So it's a little more than two
11 blocks from the subject site, one going sideways and one
12 going north if you will, or going two blocks that way.

13 A That's about, yeah. Two blocks.

14 Q Yes.

15 A That's right.

16 Q Okay. Thank you.

17 A Can I sit down?

18 Q Oh, yes. I'm sorry. I didn't pick up how long
19 you had lived there. Seventeen years was it?

20 A About 18 years.

21 Q Eighteen years. And when you moved in, Colesville
22 Towers was there?

23 A It was.

24 Q And the library was there?

25 A Yes.

1 Q And Chelsea School, or not Chelsea School, Holy
2 Name I guess --

3 A Yes.

4 Q -- Girl School was there.

5 A Right.

6 Q And you felt that it was a good neighborhood to
7 move into despite those uses, didn't you?

8 A Correct.

9 Q They weren't destabilizing the neighborhood.

10 A No.

11 Q And they were compatible with your neighborhood?

12 A Yes.

13 Q And beyond that, when you --

14 A Can I just, I just want to say that in terms of I
15 don't know that the commercial property on the corner of
16 Colesville Road and Cedar is compatible with my immediate R-
17 60 neighborhood. It's an outlier. I realized it was there
18 and on that corner.

19 Q But it didn't affect your purchase. You still
20 thought it was a good place to live.

21 A That's correct.

22 Q SOECA I think has, from your website, over 700
23 households?

24 A Well, not the -- that's the community. That's the
25 Seven Oaks-Evanswood community.

1 Q Yes.

2 A There are not, I don't think there are not 700
3 members in the association right now because they're not
4 paid up.

5 Q No. But within --

6 A SOECA start --

7 Q Within your community association boundaries,
8 there are 700 households.

9 A Approximately, yes.

10 Q And 44 of them are opposed to this.

11 A No. I would say 44 who showed up at the meeting
12 voted to oppose the re-zoning.

13 Q Okay.

14 A Maybe it's --

15 Q I thought --

16 A -- 41. I said --

17 Q Forty-four signed the petition.

18 A No.

19 Q I think.

20 A No. I can clarify if you want.

21 Q You took a poll of 66 houses, you heard from 46
22 and 44 opposed.

23 A No. I'm sorry if I was --

24 Q Well, that's what I wrote down.

25 A Well, but I don't think you got all my testimony.

1 What I said is in the immediate, in the summer when we did
2 -- we were asked to take a poll of the nearby adjacent
3 households along Springvale, Ellsworth and Pershing.

4 Q Okay.

5 A And of those houses, there are 65 that we polled
6 and --

7 Q Sixty-six you said.

8 A I'm sorry. Let me just get my numbers in front of
9 me. Sixty-six, you're right. Sixty-six houses. And we
10 heard from 36. Those are the people who responded to the
11 poll.

12 Q You heard from 36?

13 A Yes.

14 Q Oh, I had written down 46 but --

15 A No, it was 36.

16 Q -- 36 I like better. Okay, 36.

17 A Those are the ones who responded.

18 Q Yes. You heard from 36.

19 A And of those --

20 Q And how many of them opposed it?

21 A Thirty-four.

22 Q Thirty-four opposed.

23 A And two who did not express a position.

24 Q Correct. Okay. And so that's well short of the
25 700 households in the SOECA membership area.

1 A That's right. There aren't 700 households on
2 those, in those areas of the 66.

3 Q Correct. And then when you went to the meeting,
4 the vote was, there were about 55 people there?

5 A Correct.

6 Q Forty-one voted against it.

7 A Forty-one voted to uphold our current zoning and
8 to oppose the re-zoning.

9 Q Okay. That wasn't just limited to the blocks
10 immediately surrounding. That was for any SOECA member.

11 A Those were for the members of the association,
12 that's right.

13 Q And so 41 of this total SOECA membership opposed
14 it.

15 A Those are the people who showed up, that's right.

16 Q And you have an outreach method where you have a
17 newsletter?

18 A Yes.

19 Q A list serv?

20 A Yes. It includes people who are not just in the
21 SOECA family.

22 Q So even more than SOECA is on the list serv?

23 A Some other people, yes.

24 Q And you have meetings once a month?

25 A No. It's not every month. It's every couple of

1 months and not over the summer.

2 Q But through those methods, you reach 700
3 households?

4 A We -- the newsletter is distributed throughout the
5 community.

6 Q So it's pretty widely read throughout the
7 community.

8 A I don't know if it's read but it's distributed.

9 Q Well, it's distributed. Okay.

10 A It's distributed.

11 Q So there's no secret about this proposal in the
12 community.

13 A No. There is not.

14 Q And in addition to your mailings, EYA made
15 mailings throughout the community to notify people of its
16 plans and to invite them to open houses.

17 A You would know that better than I do but my
18 understanding is yes.

19 Q Did you get one?

20 A No. I did not get a mailing.

21 Q You did not get one?

22 A No. I did not.

23 Q All right. Has there been press coverage about
24 this project?

25 A Yes. There has been some press coverage.

1 Q So I think it's pretty safe to say there are very
2 few people in the broader SOECA neighborhood who don't know
3 about this.

4 A I think there are a lot of people who know, yes.

5 Q The neighborhood here contains a large multi-
6 family building at the towers.

7 A The property at Colesville and Cedar, yes.

8 Q Right.

9 A This is, well, it's across Ellsworth on, yes, on
10 that location, yes.

11 Q Okay. And there's a library in the neighborhood
12 as well?

13 A There's a library across from the property, yes.

14 Q And the school itself.

15 A The Chelsea School is currently on that property.

16 Q And the Springvale Terrace nursing home or senior
17 housing project is in the neighborhood.

18 A Yes.

19 Q And the special exception not in residential uses
20 along Cedar are in the neighborhood.

21 A Yes.

22 Q And none of those is single-family residential, is
23 it?

24 A Well, actually, the houses along Cedar, those are
25 single-family residentials, only by special exception.

1 There are only four of them that have that right now.

2 Q The four that have it, they're not single-family
3 residential purposes.

4 A They're not used that way.

5 Q They're not used that way. And the school is not
6 used for single-family residential.

7 A No.

8 Q Nor is the library.

9 A No.

10 Q Nor is Colesville Towers.

11 A Not for --

12 Q Nor is the office building next to Colesville
13 Towers.

14 A Where is that?

15 Q Just to the south of it along Colesville Road.

16 A On the other side which is --

17 Q No, no. On the same side of Cedar. Right at the
18 northeast corner there, there's a small office building,
19 isn't there?

20 A Right next to it? I don't --

21 Q Right next to it.

22 A There may be.

23 Q Okay.

24 A I can't tell.

25 Q None of those is single-family residential uses in

1 any respect.

2 A No.

3 Q And you find them to be compatible uses in the
4 community?

5 A I don't find the, as I said, I don't find the
6 commercial and the office compatible with the residential
7 uses. That's also an outlier. And the library is
8 compatible, yes.

9 Q Okay.

10 A We haven't had a problem with the school. The
11 school has been there and if, it's been, the neighbors have
12 been okay with it and if the traffic had been controlled on
13 Ellsworth, it would have been even better.

14 Q Well, we'll get to how compatible that is in a
15 minute, but the bottom line is there are multiple non-
16 residential uses in the neighborhood and they were there
17 when you moved in and you found the neighborhood to be a
18 desirable place to live with those uses.

19 A I don't know. I'm not sure how to answer that. I
20 mean, I --

21 Q Yes or no.

22 A I did move there and I, that was fine in terms of
23 what is near my house.

24 Q I'll take that as a yes. Do you know Mr. Knopf?

25 A Mr. Knopf. I don't -- I've met him.

1 Q Have you seen the letter that Mr. Knopf wrote on
2 behalf of SOECA involving the Chelsea School?

3 A I believe you've introduced it as an exhibit. I
4 don't think I've read the whole letter.

5 Q Let me see if I can find a copy of that. While
6 we're looking for that, I think you are aware of one
7 paragraph, at least, where -- well, let me find it first so
8 I don't have to go word to mouth. There it is. Thank you.

9 MR. BROWN: What's the exhibit number?

10 MR. HARRIS: Yes. I was just going to look for
11 that.

12 MS. ROBESON: Oh, okay.

13 MR. HARRIS: I'm sorry. One moment. I'm sorry.
14 Did someone say --

15 UNIDENTIFIED SPEAKER: 113.

16 MR. HARRIS: 113? Yes. I concur. 113.

17 BY MR. HARRIS:

18 Q And I think your counsel is giving you 113. Would
19 you agree with me that paragraph no. 1, three pages into
20 that document I believe --

21 A I'm sorry. What page are we on?

22 Q The third page in. It's not numbered. It's
23 actually the first page of an October 1, 1999 letter that
24 was part of that package. Would you agree with me that
25 paragraph 1, in which it's talking about the Chelsea School

1 site, says that it is the buffer area?

2 A It says the site is a very sensitive one for the
3 community as it is the buffer between -- yes.

4 Q And they're talking about the Chelsea School site
5 there.

6 A Yes.

7 Q Okay. And does the school serve as an effective
8 buffer or transition to the community today?

9 A I think the school has not been a problem in terms
10 of the neighborhood. I think the buffer is the Cedar Street
11 houses.

12 Q I think your, SOECA's counsel's letter says --

13 A I understand but that's --

14 Q You disagree with that.

15 A Well, that was also in 1999. I don't know what
16 all the things that are there but I --

17 Q Has the buffer shrunk?

18 A Excuse me?

19 Q Has the buffer moved from 1999?

20 A I think the buffer is the Cedar Street houses.

21 Q I understand.

22 A Besides, this is, you know, this is legal
23 argument.

24 Q Okay. That means it's right or wrong?

25 A I'm sure at the time, it was right.

1 Q Okay.

2 A It's legal argument. The buffer is --

3 Q That's fine. That's fine.

4 A -- the Cedar Street houses and I think that's
5 clear from the master plan.

6 Q I think you admitted that, or stated in your
7 testimony that the use of townhouses is one way in which to
8 create a transition between different types of development.

9 A That's what the master plan says, yes.

10 Q And you agree with that?

11 A I agree that it's used along Georgia, it's
12 recommended along Georgia Avenue in the master plan as a
13 transition. I think it depends.

14 Q But townhouses can be a transitional use.

15 A My understanding is yes.

16 Q Yes. Your neighborhood, would you agree with me
17 that it's a broad mix of residents?

18 A I'm not sure what you mean.

19 Q Well, ages. From over 70 to under 30?

20 A Sure. Yes.

21 Q Some with kids, some without kids?

22 A Yes.

23 Q Some people have no kids?

24 A Yes.

25 Q Employment ranges from professionals to hourly

1 wage earners?

2 A I believe so, yes.

3 Q Retirees probably?

4 A Yes.

5 Q Various income levels from, you know, the higher
6 earning professionals perhaps to lower earning teachers of
7 the sort?

8 A I don't know that I know what people earn, but
9 there are a range of professions in the neighborhood.

10 Q Okay. And those are the same kind of people who
11 live in townhomes, aren't they?

12 A I assume so.

13 Q And the values of your homes there, are they in
14 the 500, \$600,000 range maybe?

15 A I believe so. I don't know what the range is for
16 all of the houses along there.

17 Q And is it your understanding that the value of
18 these townhomes will be at least equal to that on average
19 other than the MPDUs?

20 A I don't know. I know, I only know what EYA has
21 told us about what they said they were going to set the
22 price at.

23 Q And what did they say?

24 A Between 600 and 800,000.

25 Q Okay. So they're not going to deprive from the

1 neighborhood in terms of value.

2 A I don't know. I mean, I can tell you what they
3 said they were going to sell --

4 Q If they sell for that.

5 A I guess -- I'm not sure I understand your
6 question. In terms that they'll sell at around the same,
7 they will sell above the price point.

8 Q Okay. That's fine.

9 A If that's what your point, your question is.

10 Q Fine. And do you expect the townhome owners to
11 become active in their community?

12 A I don't, I don't know if they will or not. They
13 may have their own association and may be active in that as
14 well.

15 Q But they would be eligible to join SOECA?

16 A That's my understanding, yes.

17 Q And would you encourage them to join?

18 A We encourage everyone in the neighborhood to join.

19 Q And do you have any reason to believe they
20 wouldn't join and become active?

21 A Only based on what other people -- I think they
22 are no more, they are no more or less likely to join than
23 other people.

24 Q Fair enough. You're aware that for decades,
25 Montgomery County has recognized that townhouses are

1 inherently compatible with single-family detached units?

2 A I don't know that.

3 Q Are you aware that in every new community where
4 MPDUs have to be provided, townhouses are allowed as a
5 matter of right?

6 A Well, I understand that in R, under R-60, we could
7 have townhouses on this site so --

8 Q So at least to that degree, they're determined --

9 A Sure.

10 Q -- to be inherently compatible.

11 A Yes.

12 Q The talk earlier today about the cluster option of
13 the R-60 and the MPDU option. Are you aware that there
14 really are two different things between the cluster option
15 and the MPDU optional method of development?

16 A I'm not a zoning expert. I do understand that you
17 can do R-60 cluster with or without MPDUs is my
18 understanding, if that's what you're referring to.

19 Q And I think the regulations that we're using today
20 is really the MPDU optional method, not the, under the R-60,
21 not the R-60 cluster option.

22 A I believe that to be the case.

23 Q And Mr. Brown was talking about 39 possible units
24 there. You were sitting there I think when you heard that.

25 A Yes.

1 Q So are you saying that 39 units would be
2 compatible with this neighborhood?

3 A Well, I don't -- what I'm, I don't know what I'm
4 saying. I didn't say that. I think the issue was that
5 there is an option that could allow 39.

6 Q The question is a yes or no question. Do you
7 believe 39 units, under the MPDU optional method, would be
8 compatible?

9 A It might be, depending on how it was done.

10 Q Do you believe that the manner in which EYA has
11 located these townhouses with the ends of the units fronting
12 towards Springvale is preferable to a plan in which the
13 townhouses might be just fronting continuously along
14 Springvale?

15 A I don't know if it's preferable. I think it
16 depends on what the plan looked like and so I don't know.

17 Q Well --

18 A But I think if -- my understanding is it could be
19 oriented 39 with that same kind of frontage along
20 Springvale.

21 Q I'm showing you a plan that shows townhouses lined
22 up along Springvale Road.

23 A Do we need to mark this?

24 MS. ROBESON: Well --

25 BY MR. HARRIS:

1 Q I don't think I need it as an exhibit. I only
2 need you to answer the question.

3 MS. ROBESON: Well --

4 BY MR. HARRIS:

5 Q Do you think townhouses lined up along Springvale
6 Avenue or Springvale Road would be compatible?

7 A I'm not sure. Can you have townhouses in a block
8 like that?

9 MS. ROBESON: Mr. Harris, I would like it marked
10 as an exhibit.

11 MR. HARRIS: Okay. I only have one copy.

12 MS. ROBESON: Okay. Well, you can use it and then
13 we'll mark it as Exhibit 152.

14 BY MR. HARRIS:

15 Q Okay. So you are technically correct. You can't
16 have that many in a row. You would have to break up the
17 row. But I think it's seven units, so you could break that
18 into two rows, two sticks essentially. Are you saying that
19 would be or would not be compatible?

20 A I'd have to look at the exact site. I don't, I
21 think it would probably be you would likely not want so many
22 fronting but I don't know. It would depend on what it
23 looked like. I think that what Mr. Brown was talking about
24 was an --

25 Q I know what he was talking about but that's not --

1 A -- arrangement that had the same number.

2 Q -- required, is it?

3 A I don't --

4 Q What Mr. Brown --

5 A I don't know what's --

6 Q You don't know what's required.

7 A I'm not a zoning expert. I can't, I don't know

8 that.

9 Q Are you a master plan expert?

10 A No. I just read the master plan.

11 MS. ROBESON: Let's get that marked.

12 MR. HARRIS: Okay.

13 MS. ROBESON: Is that 152?

14 MR. HARRIS: Yes.

15 (Exhibit No. 152 was marked for

16 identification.)

17 MS. ROBESON: And can you describe what that is?

18 MR. HARRIS: Okay. I'm sorry. That is a

19 handwritten Bob Harris drawing of townhouses on the Chelsea

20 site.

21 MS. ROBESON: Like Mister -- I've never had two

22 attorneys that are --

23 MR. HARRIS: I will add that it's more crude than

24 Mr. Brown's.

25 MS. ROBESON: Okay. So well, if Mr. Brown's is

1 in, yours is coming in also. Handwritten plan of
2 townhouses.

3 BY MR. HARRIS:

4 Q Ms. Spielberg, you're aware that the Washington
5 Metropolitan Area is predicting a population growth over the
6 next 20 years?

7 A I'm not -- I have not followed that. I'm not
8 aware of that. I don't know.

9 Q Were you here when Mr. Iraola was talking about
10 the housing element of the general plan, Exhibit 132?

11 A Yes.

12 Q And did you hear him say that the predictions
13 there are that by, if I miss, by 2030 I think we'll have
14 155,000 more residents in the County? Did you hear that?

15 A I don't remember that. If you are saying that's
16 his testimony, I can, you know, if you want me to accept
17 that, that's fine.

18 Q Yes. We do.

19 A I don't remember what his numbers were.

20 Q Okay. Let me show you Exhibit 132. At the top of
21 page 6 with a circle, I've highlighted the first two lines
22 up there.

23 A Okay. I've looked at it.

24 Q Yes. Okay. And would you read the highlighted
25 portion?

1 A "The County population is forecast to exceed one
2 million by 2015 and to add 155,000 residents and 72,000
3 households between 2010 and 2030.@ Do you want me to keep
4 going?

5 Q No. That's fine. And you have nothing to
6 disagree with that data.

7 A I don't have any independent knowledge about that.

8 Q Okay.

9 MS. ROBESON: What is she reading from, Mr.
10 Harris?

11 MR. HARRIS: That is from the general plan,
12 Exhibit 132. I mean, the housing element of the general
13 plan.

14 MS. ROBESON: Okay. All right.

15 MR. HARRIS: Which is Exhibit 132.

16 BY MR. HARRIS:

17 Q Okay. Thanks. By the way, did SOECA oppose the
18 construction of the purple line along Wayne Avenue?

19 MR. BROWN: Objection. What's the relevance of
20 this? It's way beyond direct examination.

21 MS. ROBESON: Mr. Harris, what is the -- well --

22 MR. HARRIS: We've had a lot of testimony about
23 the purposes of the RT zone and the transition and its
24 propriety near transit. I'm curious to know what their
25 position is on transit service.

1 MS. ROBESON: I believe that --

2 MR. BROWN: Well, ask that question.

3 MS. ROBESON: I believe she did testify that the
4 neighborhood would get pressure from the extension of the
5 purple line so I'm going to let him ask the question.

6 THE WITNESS: I'm sorry. Can you repeat it?

7 BY MR. HARRIS:

8 Q Did SOECA oppose the purple line?

9 A SOECA's position was to support an underground
10 purple line along Wayne Avenue, so we didn't oppose the
11 purple line but we supported an underground option.

12 Q And did you oppose or support a station at Dale
13 Drive?

14 A We -- I don't think SOECA took an official
15 position on that. I don't believe we did.

16 Q Okay.

17 A There were certainly people in the -- yes. I'm
18 not sure that, I don't remember whether the neighborhood
19 association took an official position on that.

20 Q Back to the R-60 MPDU option. You're aware that
21 that requires no master plan recommendation. It's
22 effectively a matter of right development option.

23 A I don't, I don't know that. I mean, if you, if
24 that's what you're saying it is, it's a matter of right. I
25 think there's certain elements in there maybe that need

1 approval but I don't know. I'm not a zoning person.

2 Q The --

3 A I don't know that.

4 Q The houses could front on Springvale under an MPDU
5 cluster option.

6 A I believe that's the case. Some of them could,
7 yes.

8 Q And so whatever number of units, my plan showed
9 perhaps 16 along there --

10 MS. ROBESON: Your plan is Exhibit 152?

11 MR. HARRIS: Yes. Thank you.

12 BY MR. HARRIS:

13 Q Exhibit 152 I think showed 16 along there, that
14 obviously could vary, but in any respect, they easily could
15 have driveways along Springvale Road for access.

16 A If they are houses along Springvale, I assume they
17 could have driveways, yes.

18 Q And that could be whether they were single-family
19 detached or townhouses.

20 A I, I don't know. I assume with a single-family
21 you can. I don't know what the requirements are with a
22 townhouse in terms of that.

23 Q You're aware that the County's land use policies
24 call for the preservation of the agricultural reserve that's
25 about a third of the County essentially for agricultural

1 use?

2 A I believe I've heard that.

3 Q And --

4 A I'm not familiar with all of that.

5 Q Thank you. And that both the housing element of
6 the general plan and other plans generally call for
7 concentrating development into more urban areas?

8 A I'm not familiar with that part of the plan. I
9 don't, you know, you could show it to me. I'm not
10 disagreeing with you. I don't know.

11 Q Well, would you oppose that sort of a governmental
12 policy?

13 A That development should be --

14 Q Concentrated in urban areas for the preservation
15 of rural areas.

16 A I don't think I oppose that general principle.

17 Q Mr. Knopf's letter that was Exhibit --

18 MS. ROBESON: 113.

19 BY MR. HARRIS:

20 Q -- 113, I'm going to mark this one so I can
21 remember, I'll show it to you again. Mr. Knopf, on -- oh,
22 you have a copy there.

23 A Um-hum.

24 Q -- on behalf of SOECA, your organization,
25 commented negatively about the existing Chelsea School in a

1 number of respects, didn't he?

2 A Are you referring to something in particular?

3 Q Yes. Let's start with paragraph no. 2 on page 1
4 of the October letter.

5 A Okay.

6 Q As I read, it says, "The existing facilities
7 seriously adversely impact the nearby houses aesthetically
8 as well as by the intensity of the operations.@ The letter
9 does say that, right?

10 A Yes, it does.

11 Q And that was SOECA's position in 1999.

12 A Yes.

13 Q And to the next page, page 2 -- well, do you agree
14 with that?

15 A Do I -- at the time --

16 Q Do you agree that the then existing facilities of
17 the Chelsea School seriously adversely impacted the nearby
18 houses aesthetically?

19 A I don't remember what it was like in 1999. I was
20 not involved with this process.

21 Q It's the same buildings.

22 A Then --

23 Q The buildings haven't changed.

24 A Okay. Then I guess they do. They made
25 representations they were going to change some things so I'm

1 not sure.

2 Q But that's the existing building. Seriously
3 adversely impact the nearby houses aesthetically.

4 A That's what he says.

5 Q And they impact the nearby houses by the intensity
6 of their operation.

7 A That's what it says, yes.

8 Q And you're aware that Chelsea, under the special
9 exception, can more than double the size of its student body
10 from what was then an adverse impact?

11 A One of the conditions was that they could go up to
12 200, and there were a number of other conditions they were
13 supposed to comply with as part of that as well.

14 Q And they were going to be allowed to add a number
15 of new buildings and expand buildings on the site as well,
16 weren't they?

17 A I believe so. I need to look at the details of
18 it. There were a number of conditions in the special
19 exception.

20 Q And the traffic forecasts at that time were that
21 the amount of traffic in the area would substantially
22 increase as well.

23 A I don't know if you want to point me to something
24 with special exception, then I can look at it. I don't
25 know.

1 Q Bear with me.

2 MS. ROBESON: It's 109.

3 MR. HARRIS: Is that the letter?

4 MS. ROBESON: That's the opinion.

5 MR. HARRIS: Oh, the opinion.

6 MS. ROBESON: I thought that's what you were
7 looking for.

8 MR. HARRIS: No. I was looking for another
9 document, I'm sorry, that's not been admitted. Oh, here's
10 the file. Bear with me a minute. I have to dig in and have
11 this marked as well. Well, I don't see it right now. I'll
12 move on.

13 BY MR. HARRIS:

14 Q Would you agree that if the traffic, the number of
15 trips on the streets was going to increase to 200 students,
16 that that would be more of an adverse impact on the
17 neighborhood than already was the case in 1999?

18 A My understanding of the special exception was it
19 was conditioned on a traffic plan which was supposed to take
20 care of those problems which would have the ingress and
21 egress coming off of Ellsworth which would take it out of
22 much of the neighborhood, so it wasn't supposed to be along
23 Springvale and Pershing but in the back off of Ellsworth.

24 Q So concentrating the number of trips --

25 A The buses were supposed to --

1 Q -- from a 200 student school onto Ellsworth is
2 okay with you?

3 A Well, the entrance from Ellsworth is on Cedar and
4 there's a traffic restriction preventing traffic coming into
5 the neighborhood, and I think the idea was to put, put the
6 buses onto Ellsworth so it was entering from the central
7 business district is my --

8 Q Pretty much where the EYA Chelsea Court project
9 would have its access on Ellsworth.

10 A But just on Ellsworth. It wouldn't go through to
11 Pershing.

12 Q But the --

13 A So it would be just to turn around and it would
14 come in and out --

15 Q So if --

16 A -- onto Ellsworth.

17 Q So if all the trips from a 200 student school have
18 to go in and out on one exit, that clearly would be many
19 more trips than would be going in and out on Ellsworth from
20 a 76-unit townhouse project, wouldn't it?

21 A No. I'm not sure that's the case because a lot of
22 those are buses so I don't know if it's 200. If they're
23 coming in on buses, I don't know if that's 200 trips. And
24 there would, 76 townhomes, I guess 150 cars potentially so
25 I'm not, I'm not sure that that is the case.

1 Q Okay. In any respect, you were okay with all of
2 the traffic from a 200 student school being on Ellsworth
3 Drive.

4 A Well, we did -- there was concern expressed by the
5 community association with the special exception, and what
6 the Board approved was a traffic plan that was supposed to
7 mitigate those issues.

8 Q Wasn't it SOECA's position that they recommended
9 that that be the access?

10 A I don't, I don't know that. I don't remember. I
11 wasn't involved with that. It could be. I know that that's
12 what the Board of Appeals approved as part of the traffic
13 plan. I believe the traffic plan was proposed by Chelsea
14 School. I don't know.

15 Q Well, I think the point is clear. Would you be
16 agreeable to a school buying the block across the street
17 from you and building a new school there instead of the
18 single-family homes?

19 A I don't know that I ever thought about it. I, I
20 don't know. I mean, we have single-family homes now. I
21 think I'd have to -- I really don't know.

22 Q Would you find it more or less compatible with
23 your home than homes across the street from you?

24 A I don't, I don't know. I mean, I find the homes
25 that are there now very compatible with me, if that's the

1 question.

2 Q So you wouldn't find a nonresidential special
3 exception use across from you to be incompatible?

4 A I think it depends what it is.

5 Q A school.

6 A Well, if it's a -- it depends what property they
7 took up. I'm happy with the single-family homes across from
8 me right now.

9 Q If the Chelsea School were to move there with its
10 traffic, would you find that to be compatible?

11 A I don't know. It might be. I don't know.

12 Q It might be.

13 A Um-hum.

14 Q How about a special exception for a nonprofit
15 office?

16 A I would prefer the homes.

17 Q You would -- yes?

18 A Prefer homes across from me. The nonprofit --

19 Q Would you prefer that to a school?

20 A I don't know. I don't know. I mean, there are
21 people in our neighborhood who obviously live across from a
22 school and it's okay with them, so I just haven't considered
23 that.

24 Q So a school can be a compatible use even though
25 it's nonresidential.

1 A I think, yes, it can be. I mean, it is in our
2 neighborhood now. It's under R-60, and my understanding is
3 that's allowed under the existing zoning.

4 Q You're aware that the Chelsea School property
5 could be used by a religious school without a special
6 exception?

7 A Well, at one point, it was owned by the Sisters of
8 the Holy Names so, and run as a parochial school and they
9 sold it.

10 Q And so the answer is yes?

11 A If the -- yes. I understand that.

12 Q And are you aware that the Holy Names School had
13 quite a few more students than Chelsea School with 83 or 86?

14 A I'm not aware of that. I don't know that to be
15 the case.

16 Q When did you move in did you say?

17 A '93.

18 Q '93. Did you find the school to be an acceptable
19 use in the community then?

20 A Yes.

21 Q It wasn't a traffic problem?

22 A I didn't find it to be a traffic problem, no.

23 Q Okay. Nothing in the RT zone requires an
24 applicant to prove that other options are undesirable.

25 A I'm not a zoning expert. I think, I think the RT

1 zone, it says what it says in the statute and that's what
2 governs.

3 Q And I assume you would agree that the Park and
4 Planning staff members know the Zoning Ordinance better than
5 you do?

6 MR. BROWN: Argumentative.

7 MS. ROBESON: Yes. I --

8 THE WITNESS: I certainly disagree with what they
9 found.

10 BY MR. HARRIS:

11 Q Okay.

12 A So I'm not sure they do.

13 Q Okay. Being in disagreement with you does not
14 make them wrong. The --

15 A Doesn't make them right either.

16 Q Is it true that you talked with the Park and
17 Planning staff extensively over the past year about this
18 case?

19 A I don't know if extensively is the right word. I
20 talked --

21 Q More than five times?

22 A I don't know. I don't know if it's more than five
23 times.

24 Q About five times?

25 A I don't know. I --

1 Q More than once?

2 A Yes. Um-hum.

3 Q And did you send any written documentation to the
4 staff?

5 A Yes. Yes.

6 Q More than once?

7 A I don't know if I sent more than once from me to
8 the staff in writing.

9 Q But other people from SOECA did?

10 A Yes. There have been, people have communicated
11 with SOECA.

12 Q Noting --

13 A Including our attorney.

14 Q Noting the reasons for your opposition?

15 A Yes.

16 Q And those reasons were similar, if not the same,
17 as the reasons you're presenting today?

18 A Yes.

19 Q And you also testified at the hearing at the
20 Planning Board?

21 A Yes.

22 Q And despite your interpretation of the master
23 plan, the Park and Planning staff disagreed with your
24 interpretation, isn't that correct?

25 A They disagreed with my whole position, yes.

1 Q And that included the planner who was the
2 principal author of the master plan, she disagreed with your
3 interpretation as well.

4 A Interpretation of the master plan about?

5 Q As far as whether you needed a master plan
6 recommendation for RT zoning and --

7 A Correct. Yes.

8 Q -- and whether there was a prohibition of RT
9 zoning on the Chelsea project.

10 A Yes. I think.

11 Q Her position was basically that anybody could
12 apply for RT zoning anywhere. You don't need a master plan
13 recommendation for it.

14 A I think her testimony is on the record. I just --

15 MS. ROBESON: Hold on, Mr. Harris. Now we're
16 talking about what somebody said that's not in the room
17 and --

18 MR. HARRIS: Okay.

19 MS. ROBESON: -- I don't really see, I mean, it's
20 somewhat, I see what you're trying to get to --

21 MR. HARRIS: Fine.

22 MS. ROBESON: -- but I don't think it's necessary.

23 MR. HARRIS: That's fine.

24 BY MR. HARRIS:

25 Q Let's go to the Staff Report. The Staff Report

1 disagrees with your interpretation of the master plan, is
2 that correct?

3 A The Staff Report disagrees, yes, with our position
4 entirely.

5 Q And it disagrees with your position on the
6 purposes of the RT zone.

7 A Yes.

8 Q And the requirements for obtaining RT zoning.

9 A I don't, I don't know if it disagrees on what the
10 requirements are. I think it disagrees on the conclusion
11 about whether it satisfies the RT zone.

12 Q Do you now agree though that there are three
13 alternative options under the RT zoning, one being a master
14 plan amendment, two being where it's appropriate or three
15 being where it would be a transition or a buffer and that if
16 you meet any one of those, the zone can be approved?

17 A I believe that's correct, yes.

18 Q And that's different than your position earlier on
19 that you felt that a master plan recommendation had to be
20 affirmative before you could obtain it.

21 A I don't know. It's, it may be or may not be
22 different. I think we've argued all along that it is not
23 appropriate, it is not an appropriate buffer and it's not
24 consistent with the master plan which your planner has also
25 talked about that it's important to talk about consistency

1 with the master plan, and we don't think it is.

2 Q And in any respect, ultimately, the Planning staff
3 and the Planning Board disagreed with your position.

4 A Yes. That's correct.

5 MR. HARRIS: I don't think I have any further
6 questions.

7 MS. ROBESON: Now, you want to ask questions of
8 Ms. Spielberg?

9 MS. VOLK: Yes.

10 MS. ROBESON: Are you in opposition or -- okay.
11 Cross-examination goes to people who are on the opposite
12 side of --

13 MS. VOLK: I am not in opposition.

14 MS. ROBESON: Okay. Can you express whatever you
15 want to express in --

16 MS. VOLK: No. I'm in opposition of the proposed
17 re-zoning.

18 MS. ROBESON: That's right.

19 MS. VOLK: Right.

20 MS. ROBESON: Right.

21 MS. VOLK: Yes.

22 MS. ROBESON: So we would let Mr. Brown do
23 redirect. She is testifying -- Ms. Spielberg is your
24 client, correct?

25 MR. BROWN: (No audible response.)

1 MS. ROBESON: Okay.

2 THE WITNESS: I'm a representative of SOECA. I'm
3 not individually a client.

4 MS. ROBESON: Okay. Do you think that you'll be
5 able to bring out the points you want to bring out when you
6 testify?

7 MS. VOLK: No actually. I don't think I would.

8 MS. ROBESON: Okay. What do you want to ask her?
9 Just proffer what you want to ask her.

10 MS. VOLK: Just things about that particular SOECA
11 meeting and about the issue that Mr. Harris raised about the
12 population and meeting the population growth and housing
13 demands in Montgomery County.

14 MS. ROBESON: Well, that's something that you can
15 bring out on your own.

16 MS. VOLK: Okay.

17 MS. ROBESON: Okay?

18 MS. VOLK: Then I will then.

19 MS. ROBESON: If you think he's wrong in the
20 population demands, you can bring that out when you testify.

21 MS. VOLK: Okay. Thank you.

22 MS. ROBESON: You don't need to go through cross-
23 examination. Mr. Brown, do you have any redirect?

24 MR. BROWN: Just a couple of points.

25 REDIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Ms. Spielberg, it wasn't a total loss at the
3 Planning Board, was it?

4 A Oh, no. We had, we had the very articulate
5 dissent of Planning Board Member Amy Presley.

6 MS. ROBESON: Yes. And I'll point out that I have
7 read the Planning Board's very articulate recommendation
8 both ways so it, we don't base, well, my recommendation is
9 not going to be based on a tally sheet of how many people
10 are opposed and how many people are in favor or how many
11 recommendations of approval solely on numbers so just keep,
12 keep that in mind. So anyway.

13 MR. BROWN: A couple more things.

14 MS. ROBESON: Okay.

15 BY MR. BROWN:

16 Q I just want to clarify the sequence of events.
17 The Exhibit 109 shows the approval of the Chelsea School to
18 have a special exception as of October 5, 2000, right?

19 A That's correct.

20 Q And the letter that Mr. Harris keeps referring to
21 is dated what?

22 A It's dated October 15th, 1999 and that's Exhibit
23 113.

24 Q So Mr. Knopf was not talking about actual
25 operations of the Chelsea School before it even got

1 approved, was he?

2 A No.

3 Q What was he talking about?

4 A He was talking about conditions prior to the
5 hearing on the special exception.

6 Q And who was operating the school at that time?

7 A It was owned by the Sisters of the Holy Names
8 prior to the Chelsea School applying for a special
9 exception.

10 Q And the Sisters of the Holy Names did not have a
11 special exception, did they?

12 A No, because my understanding, because they are a
13 religious institution, they didn't require that.

14 Q Just a couple of questions about the SOECA
15 meetings where you talked about this plan. What, on
16 average, is a typical turnout for one of those meetings?

17 A It can be anywhere from 10 to 20 people maybe I
18 guess.

19 Q So this one was much larger than normal?

20 A Yes, it was. It was -- the room was quite crowded
21 and that's not usually, usually the case. People had
22 trouble getting seats.

23 Q What was the atmosphere like?

24 A There were a number of people who were very, very
25 concerned with what was going on in the neighborhood. The

1 neighbors, particularly those who are most directly
2 affected, had come out because of their concern.

3 Q Do you have any other comments about or thoughts
4 in light of the cross-examination about your decision to
5 move into this area back in what was it, 1993 was it?

6 A 1993. I think that the reason why we chose this
7 neighborhood is that it is close to the central business
8 district but at the same time, it was protected by the line
9 on Cedar Street, and I think the zoning that is, exists and
10 surrounds the property and has been maintained as R-60 is
11 critical to maintaining the integrity of the neighborhood
12 and to stabilizing it so that what is in the central
13 business district and that density level stays there and
14 doesn't impinge on our neighborhood which I think is the
15 goal of the planning process that's been in place through
16 the master plans.

17 MR. BROWN: I have nothing further.

18 MS. ROBESON: Any, just based solely on --

19 MR. HARRIS: Yes.

20 MS. ROBESON: Okay.

21 RE CROSS-EXAMINATION

22 BY MR. HARRIS:

23 Q Let me re-redirect your attention to the sequence
24 of events. Isn't it true that the Chelsea School was
25 operating there before 1999?

1 A Before 19 -- I believe they leased the property
2 from the Sisters of the Holy Names for a certain period of
3 time. I don't know when that first took place.

4 Q And so if I told you that reading from a Staff
5 Report here, I say, I see that it says that they leased the
6 property since 1990 from the owners of the Sisters of Holy
7 Names of Jesus and Mary, you wouldn't disagree with that?

8 A I don't have firsthand knowledge of that but they
9 did lease it for some period of time.

10 Q So they were in fact operating at the school in
11 1999 when Mr. Knopf wrote that letter, weren't they?

12 A They were operating it. They didn't own the
13 property.

14 Q They were operating it though.

15 A They were operating the school. The property --

16 Q And it wasn't the Holy Names School that was
17 operating there, it was the Chelsea School, wasn't it?

18 A I believe they were operating for some period of
19 time.

20 Q And so it was the Chelsea School about which those
21 complaints were made, not the Holy Names School.

22 A Well, the facilities would have been owned by the
23 Holy Names and I thought that, and that's what --

24 Q That wasn't the question. The complaints were
25 about the operations there. The operations were by Chelsea,

1 weren't they?

2 A I thought some of the complaints were about the
3 facilities.

4 Q Okay. Well, they were operating the facilities,
5 weren't they?

6 A I don't know who was responsible for maintaining
7 the facilities.

8 Q Okay. Point made.

9 MS. ROBESON: Okay.

10 MR. HARRIS: Thank you.

11 MS. ROBESON: Thank you, Ms. Spielberg. Mr.
12 Brown, are you representing him or should I --

13 MR. BROWN: No.

14 MS. ROBESON: Okay. So you won't be directing
15 questions. Please state your name and address for the
16 record.

17 MR. EISENMANN: My name is Jim Eisenmann and I
18 live at 8611 Springvale Road.

19 MS. ROBESON: Okay. Please raise your right hand.

20 (Witness sworn.)

21 MS. ROBESON: Okay. Proceed.

22 DIRECT EXAMINATION

23 THE WITNESS: Thank you. Good afternoon. As I
24 just indicated, my name is Jim Eisenmann. My family and I
25 live on Springvale Road directly across the street from the

1 Chelsea School owned property and I'm appearing here to
2 testify in opposition to the proposed re-zoning of the
3 property. We live in a very peaceful neighborhood. My wife
4 Lynn and I were married in 1995 and purchased the house we
5 live in today in 1997. Since then, we've had two kids, a
6 boy, 11, and a girl, 6 years old.

7 The view out our front door is of tall, mature
8 trees and grass. To our left is the school facilities and
9 to our right is the parking lot of the Chelsea School. Our
10 house is surrounded on all sides except one by detached
11 single-family homes. Our views and our neighbors' views are
12 of backyards, front yards, side yards. It is simply not a
13 busy neighborhood and it's peaceful. There is very little
14 traffic. The teachers and students arrive peacefully in the
15 morning, are gone by mid-afternoon and unlike many
16 neighborhoods, there's very little, quote, "rush hour@
17 traffic.

18 Unfortunately, our views and our neighborhood I
19 fear will change for the worst if this property is re-zoned
20 to allow 76 townhouses. Instead of looking out at tall
21 trees and grass and mostly front yards and backyards, we
22 will look at rows of townhouses and rows of balconies on the
23 backs of townhouses. It will be busy with many more people
24 than if the school remained or if single-family detached
25 houses were built.

1 For the most part, it's my understanding that the
2 townhouses will face each other and be closed off from our
3 neighborhood, notwithstanding the sidewalk that would go
4 through there. And instead of looking out at a peaceful
5 low-level activity, we'll be witnesses to dense, packed in
6 living just like a series of small apartment buildings.

7 I don't believe that there's any need for any
8 additional transition or buffer at this site. There is
9 already a buffer and while I have more testimony in this,
10 the point has already been made, I believe, that the buffer
11 that I believe exists are the single-family detached houses
12 on Cedar Street whether they're professional or for
13 families.

14 The density, I don't believe, is appropriate.
15 Plopping 76 townhouses into a rectangular plot of land
16 surrounded on all sides but one by detached single-family
17 houses is not, in my view, definition of appropriate. In
18 contrast, if the school were to remain, then the students
19 and teachers, whether a school for 86 or 200, would be much
20 more appropriate to the density of this neighborhood.
21 Remember, students and teachers are present only part-time
22 and not at all during the summer months. For the same
23 reasons, single-family detached homes, approximately 24 or
24 so, would be far more appropriate for the density of this
25 neighborhood but simply put, 76 townhouses are not

1 appropriate to this location or density.

2 And in my view, there's nothing compatible, in the
3 normal sense of that word to me, in building 76 townhouses
4 in a community of detached single-family homes. Building
5 rows of 76 townhouses to me is incompatible. There are no
6 other townhouses in our neighborhood and second, the Chelsea
7 property is surrounded, as I mentioned, on three sides by
8 single-family detached homes and on one side by the library
9 that is there now.

10 Importantly, townhouses, to me, are not within the
11 character of our neighborhood. As I mentioned, this
12 neighborhood is filled with detached single-family homes,
13 mature trees, grassy front yards, backyards, side yards and
14 my understanding for the most part, these townhouses will
15 not have those. It will be as if these townhouses were
16 built in a separate location and then air-dropped into our
17 community.

18 The Staff Report claims, and I've heard one
19 question since I've been here today relating to the
20 compatibility of townhouses and single-family detached
21 homes, that they are essentially defacto compatible. I
22 don't personally accept this analysis and to me, to accept
23 it would be to turn the Zoning Code on its head. If
24 townhouses and detached homes were defacto compatible, there
25 seems to me there would be no reason to have all these

1 zoning rules and we would not be here today possibly. To
2 me, they're not defacto compatible.

3 And as far as the public interest is concerned,
4 I'm not sure that is in the public interest to build these
5 76 townhouses. It is certainly in the interest of EYA as a
6 developer and I understand that, but is it in the interest
7 of who? Is it in the interest of the individuals who might
8 benefit by selling them in the future, of those who perhaps
9 want to buy these townhouses? But as you probably heard,
10 many of these homes and many of the neighbors in this
11 neighborhood unconditionally oppose this re-zoning. It is
12 not that each individual townhouse might not look nice. I'm
13 sure they would look nice. Rather, to me is whether as a
14 whole, the entirety of these building 76 townhouses is
15 compatible with the neighborhood. It is not.

16 Before we bought our house in 1997, we did some
17 research. At this point in time, Silver Spring had just
18 done away with the idea of putting a mega-mall in downtown
19 Silver Spring and we found out that the plans seemed to be a
20 walkable downtown, a version of Bethesda's downtown. So we
21 bought this house for a lot of reasons. First of all, we
22 loved the house. Second of all, we loved the property, we
23 loved the grounds that were there. We thought that the
24 proximity or location of what might be the new downtown
25 Silver Spring was also great and significantly, that there

1 was a school across the street from our house. And while
2 this has been discussed as to whether the school has been a
3 good neighbor or not, I'll give you my view on this, having
4 lived across the street.

5 With some minor annoyances, we have enjoyed being
6 neighbors of the Chelsea School. And all of the school's
7 grounds are not aesthetically perfect. It's far better to
8 me than having 76 townhomes and potentially 150 more cars
9 right across the street from us. We would not have
10 purchased this house if the school was not there or if there
11 was a chance it would not have been in there, in the future.

12 Additionally, when we bought our house, we were
13 told that the school had been located on that property for
14 decades and that the only reason there was a school there
15 was because of an exception to what we thought was the usual
16 single-family homes. That fact was paramount in our
17 decision to buy this house and if I was looking for a house
18 today and this house was for sale and I knew what was coming
19 across the street, I wouldn't buy it.

20 During the May 26th hearing, Mr. Youngentob
21 testified that in the early 2000s I believe, that the school
22 wanted to expand and the community was against it, and I
23 believe there was some testimony about that today. I don't
24 believe that testimony was consistent with what I know
25 happened. I participated in some meetings with the Chelsea

1 School and the neighborhood. I do not recall any organized
2 effort to oppose the expansion. In fact, what I recall is
3 the community being supportive of it and working with the
4 school on areas of concern, and I recall the testimony that
5 Ms. Spielberg gave about where the buses would exit on
6 Ellsworth Drive.

7 In purchasing this house in 1997 and knowing that
8 the school was under a special exception to single-family
9 zoning, we thought we had a compact or a contract with the
10 County. We not only bought a house, but we invested in a
11 neighborhood with a specific character. We invested in a
12 neighborhood of detached single-family homes. If we wanted
13 townhouses to be a part of the equation, we would have
14 purchased elsewhere. The essence in character of this
15 neighborhood will be irrevocably changed if this property is
16 re-zoned to allow the 76 townhouses.

17 And in 2004, there's two children at this point,
18 we reinvested in this neighborhood when we did an extensive
19 renovation of the interior of our home, and we did so to
20 better accommodate our growing family and all the toys that
21 seem to just accumulate. It is important to note that we
22 chose to renovate versus move. Those were the choices we
23 faced at that time. And I believe also at that time, there
24 were some new homes being built on Woodside Parkway. We
25 even, I believe, looked at one of those houses but we made

1 the decision not to move but to stay and continue to invest
2 in our specific neighborhood.

3 Had I known and been able to predict the future,
4 which I can't, what was going to happen, in 2004, I suspect
5 that we would have moved. We would not have invested the
6 hundreds of thousands of dollars we invested in our home and
7 our neighborhood to make it better if it was going to be re-
8 zoned. And I seriously doubt, as the Planning Board
9 Chairman gratuitously claimed at the May 19th Board meeting
10 hearing that in five, quote, "Five years from now, I'll
11 decide it's okay.@ On behalf of my family, I ask that this
12 proposal be rejected. Thank you for your consideration.

13 MS. ROBESON: Thank you. Mr. Harris, any cross-
14 examination?

15 MR. HARRIS: Yes. Thank you.

16 CROSS-EXAMINATION

17 BY MR. HARRIS:

18 Q Were you part of SOECA in 1997?

19 A I don't know.

20 Q To what extent did you --

21 A I mean, do you mean by being a member?

22 Q Yes.

23 A Oh, I don't, I don't know.

24 Q Did you participate with SOECA in its opposition
25 to the Chelsea School special exception a couple years

1 later?

2 A I have no idea. I don't think so.

3 Q You mentioned --

4 A I don't know what they were, what the special
5 exception was for.

6 Q You didn't know about the Chelsea School special
7 exception?

8 A I know that they wanted to expand. I thought that
9 was in the early 2000s.

10 Q And did you participate in discussions at that
11 time?

12 A I was at, I recall I was at one meeting at the
13 school, I was at probably two meetings at other people's
14 houses.

15 Q Two meetings where?

16 A At other people's houses.

17 Q At other people's houses. And was that in
18 connection with opposing the expansion or supporting it?

19 A I recall the one at the Chelsea School was about
20 learning about it and the other two I recall discussing, I
21 don't know if there was a vote to oppose but I think the
22 general consensus and mine was I didn't oppose it.

23 Q Mr. Knopf's letter, which you heard us -- I'm not
24 sure when you arrived here today.

25 A I came in after.

1 Q Oh.

2 A Not after the testimony. In the middle of Ms.
3 Spielberg's testimony.

4 Q Okay. Well, let me show you a copy of Exhibit 113
5 here and ask you if you'd take a look at that.

6 A Is there anything in particular?

7 Q The highlighted part there. That is a letter that
8 counsel for SOECA wrote in 1999 opposing the Chelsea School
9 and commenting negatively about various features. Are you
10 saying that they were not speaking, that you had a different
11 position than that?

12 A Is this about the expansion?

13 Q Yes.

14 A Well, I don't recall ever seeing this letter ever.

15 Q So where he says --

16 A Aesthetically, the second part, yeah, I agree the
17 aesthetic, aesthetically. As I said in my statement, it's
18 not perfect and would I like it to look better, sure, and
19 just as I'd be sure if someone, whatever was across the
20 street, if it could look better, that would be great.

21 Q So where he says the existing facility seriously
22 adversely, this is in paragraph no. 2, seriously adversely
23 impact the nearby houses, that being yours presumably, you
24 disagree with that?

25 A At the current, that time, I have no idea if I

1 formed any opinion about that.

2 Q You have no idea what?

3 A If I formed any opinion about this statement, and
4 I certainly didn't know about this statement then.

5 Q You said that you conducted diligent research when
6 you bought the house.

7 A I didn't say diligent. I said research.

8 Q Okay. Well, I'll let the record speak for itself.
9 I do think you said that. But your research, did you
10 research who owned the property across the street from you?

11 A I don't, don't recall if I researched that in
12 particular.

13 Q Did you research what number of students had been
14 at the Holy Names School when it was operating?

15 A I don't think so. I don't recall or if I was told
16 that, what it was, I don't remember what it was.

17 Q Did you research whether a religious school was
18 exempt from special exception use?

19 A I don't think so.

20 Q Did you research that Chelsea, what the Chelsea
21 School's operations were when you moved in?

22 A What do you mean their operations?

23 Q How many students were there?

24 A I think I was told. I don't recall what it was.

25 Q This was before their expansion when you were

1 looking to buy your house.

2 A I don't recall knowing the exact number. I don't,
3 you know, I don't recall calling the school, for example,
4 and asking that.

5 Q And did you research what type of operations the
6 school conducted, who they talked to?

7 A I recall knowing about that. I don't know how I
8 found out, whether it was asking neighbors or talking, or
9 calling some other resource but, yeah. I had a general idea
10 of what they did.

11 Q And you were comfortable that the fact that there
12 was no special exception there and no limit to what number
13 of students, that was comfortable for you?

14 A I don't know if I knew there was no limit.

15 Q Okay. Earlier today, Mr. Brown was questioning a
16 planning witness about alternative land uses that could be
17 developed on the property today without the RT zoning, and
18 the discussion went on for some time about 39 dwelling units
19 there. Are you aware of that being a potential under the
20 existing zoning?

21 A No. And I wasn't here for that testimony.

22 Q No. You mentioned 24 so if the number really is
23 39, it could be quite a few more units than you believe are
24 appropriate there.

25 A In terms of detached single-family homes?

1 Q Well, again, the testimony said that they could be
2 all townhouses. Are you aware of that?

3 A I wasn't, no, because I wasn't here for that
4 testimony.

5 Q Would you support a plan that had 39 units there?

6 A Townhouses?

7 Q Well, 39 single-families.

8 A I don't know. I would have to see what it looks
9 like.

10 Q How about 39 townhouses?

11 A Same thing. It would be better than 76.

12 Q So townhouses would be okay there.

13 A It would be better than 76.

14 Q It's the number then that concerns you.

15 A It's a big concern of mine, yes.

16 Q You mentioned that your homes have grass and
17 trees. You're aware that this project will have
18 considerable grass and trees throughout the project,
19 including along the edges?

20 A I know it will have grass and trees, yes.

21 Q And the people who live in townhouses, you don't
22 have a problem with townhouse owners, do you?

23 A I don't think I testified about who, about what
24 owners would be like once they move in. I don't know why --

25 Q So you don't have --

1 A I don't know why I need to answer that question.

2 MS. ROBESON: Well, you did make some statements
3 about that you didn't want townhouses. Can you rephrase the
4 question and maybe ask him why he said that?

5 BY MR. HARRIS:

6 Q Is it the people who live in townhouses that
7 concern you?

8 A Of course not.

9 Q Is it the value of the townhouses that bother you?

10 A I didn't testify about that, no.

11 Q Well, I'm trying to figure out what it was. So
12 it's not the value.

13 A No, it's not.

14 Q And it's not the people.

15 A No.

16 Q And are you aware that under existing zoning,
17 houses could be lined up continuously along Springvale Road
18 with their driveways there. You could get a dozen or more
19 units there. Are you aware of that?

20 A Units, when you say units, do you mean townhouses
21 or detached?

22 Q Both.

23 A Both. I --

24 Q Either, or.

25 A If you're saying that, that's correct. I mean, I

1 don't know that for a fact.

2 Q Would you be okay with 12 single-family units
3 eight feet apart along Springvale?

4 A I haven't thought about 12 single-family units
5 across the --

6 Q Pardon?

7 A I have not thought about 12 single-family units
8 across the street.

9 Q Well, think about it for a minute.

10 A Because I've had longer than a minute to think
11 about the 76 townhouses. I don't know. I mean, I really
12 don't.

13 Q So then there's nothing inherently bothersome to
14 you with 12 units along there. It doesn't provoke a
15 visceral reaction on your part. You're ambivalent --

16 A I --

17 MS. ROBESON: Well, Mr. Harris, he said he didn't
18 know.

19 MR. HARRIS: Okay. Okay, fine. I have no further
20 questions.

21 MS. ROBESON: Okay.

22 REDIRECT EXAMINATION

23 BY MR. BROWN:

24 Q Mr. Eisenmann?

25 A Yes.

1 Q Would you take a moment to walk up to the easel,
2 please, and show us where your property is on Exhibit 123?
3 This is a test.

4 A It's across from what's labeled as the subject
5 property on Springvale Road on the corner of Springvale Road
6 and this, Springvale Lane.

7 Q Directly abutting the property, correct?

8 A Yeah. Across the street.

9 Q Thank you. You can sit back --

10 A Okay.

11 Q Actually, you can, I think you're done because I
12 have no further questions.

13 A Okay. Thanks.

14 MS. ROBESON: All right. Thank you. I need
15 who --

16 MS. SPIELBERG: I'm sorry. Sorry. I thought he
17 was --

18 MS. ROBESON: I don't know who Mr. Brown is
19 representing or, so just stand up if you --

20 MR. MILLSON: I have a lot of things, including
21 this big, thick book about traffic.

22 MS. ROBESON: Okay.

23 MR. MILLSON: And a bunch of posters.

24 MS. ROBESON: All right.

25 MR. BROWN: This is not my witness.

1 MS. ROBESON: All right.

2 MR. BROWN: But I think I'm going to like what he
3 says anyway.

4 MR. MILLSON: I hope so. There's going to be some
5 math. So --

6 MS. ROBESON: Hold up. No. Put it down. Just
7 state your name and address for the --

8 MR. MILLSON: My name is John Millson.

9 MS. ROBESON: Yes.

10 MR. MILLSON: I live at 8603 Springvale Road right
11 across from the property.

12 MS. ROBESON: Okay.

13 MR. MILLSON: And --

14 MS. ROBESON: And now you raise your right hand.
15 Thank you.

16 (Witness sworn.)

17 MS. ROBESON: All right. Now you can go ahead.

18 DIRECT EXAMINATION

19 THE WITNESS: So I want to talk about the bad
20 statistics behind these EYA traffic estimates so because of
21 that, I think I better establish my credentials if I'm going
22 to make a statement like that. So I was an undergrad at
23 MIT, I got a bachelor's degree in mathematics from MIT, I
24 got a PSA from Berkeley. I worked at the Institute for
25 Advanced Study in Princeton, Yale University, University of

1 Toronto. I was at UCLA for 10 years and I moved here in
2 1989. I've taught statistics many, many, many times at the
3 University of Maryland.

4 So I make a special point when I teach statistics
5 of trying to point out the errors in various statistical
6 studies and behind -- it's really a County error. I mean,
7 EYA really didn't, or Wells, they didn't make a mistake.
8 They just applied a standard formula.

9 It took me a long time. It spent, I spent two
10 weeks. First, I started on the traffic report. Then I
11 looked at the traffic report and it turned out there was one
12 page, the key page is table 1 where they predict how many
13 cars, how many trips they're going to generate, 36 in the
14 morning, I think it was 64 in the afternoon. And when I saw
15 that, I was really amazed and I thought that's very small.
16 They predicted they were going to generate fewer trips than
17 the school. So then where's that number coming from and it
18 turned out there was a footnote. And the footnote sends you
19 to this, this big monster local area transformation view and
20 policy area mobility review guidelines.

21 MS. ROBESON: Okay.

22 THE WITNESS: And in that -- then there's an
23 appendix and in that appendix, they have an equation.

24 MS. ROBESON: Okay. Let's mark --

25 THE WITNESS: I'm going to get --

1 MS. ROBESON: Are you going to be referring --

2 THE WITNESS: Yeah. I've got --

3 MS. ROBESON: -- to these?

4 THE WITNESS: Yeah. And I've got some copies. I

5 have a color copy I want to give to you.

6 MS. ROBESON: Okay. Thank you.

7 THE WITNESS: And I have a non-color copy that I'd

8 like to give to Mr. Harris.

9 MS. ROBESON: Well, we need to be fair here.

10 MR. HARRIS: This stuff makes statistics any

11 easier for me than it was in college.

12 THE WITNESS: Well, should I give him the color

13 copy?

14 MS. ROBESON: Yes. Give him, he can have my color

15 copy and I'll look at --

16 MR. HARRIS: No. We're fine with, we're fine with

17 this.

18 THE WITNESS: It's the same form.

19 MS. ROBESON: Okay. But --

20 THE WITNESS: It's just the color looks better,

21 you know.

22 MS. ROBESON: Sir, let me just, I need to mark --

23 THE WITNESS: My partner Racquel made this thing.

24 MS. ROBESON: Okay. Well, we need to mark that

25 thing as an exhibit, and we are up to 153.

1 MS. SPIELBERG: I can, I can mark it.

2 MS. ROBESON: Okay. That would be --

3 THE WITNESS: Oh, thank you. Thank you, Anne.

4 MS. ROBESON: And I'm going to mark my small
5 version as 153A and I'm going to call it, what do I call it?
6 Your --

7 THE WITNESS: The trip generation formulas.

8 MS. ROBESON: All right. I'll call it the trip
9 generation formulas, 153.

10 (Exhibit Nos. 153 and 153A were marked
11 for identification.)

12 THE WITNESS: So like I said, it took me like two
13 weeks to get to these equations. So I have to say that
14 these equations are in this County publication.

15 MS. ROBESON: Correct.

16 THE WITNESS: So what's in this appendix is a
17 whole bunch of, it's like a cookbook. You want to build
18 townhouses, here's your trip generation formula. You want
19 single-family homes, you go to another page, there's another
20 trip generation formula, right? You want to build a gas
21 station, you go to another page. And so the one thing I
22 tried to feel is where is this equation. They don't tell
23 you where the equation came from, but this is like a
24 cookbook. Here's your equation for a gas station. Here's
25 your equation for restaurant. Here's your equation for

1 townhouses. And now these equations really come out of this
2 book. This is a \$475 book and it gives our traffic expert
3 -- I don't know which one of you guys is a traffic expert
4 but I guess you know this book pretty well, right?

5 MS. ROBESON: Well, you don't ask questions of the
6 audience.

7 THE WITNESS: Okay. All right. Well, they
8 probably read this. I don't know.

9 MS. ROBESON: You tell us what you want to say.

10 THE WITNESS: But anyway, I had to go, so I had to
11 get this book out of the library. This is only the 4th
12 edition and we're waiting to get the 8th edition. So by
13 this time, when I looked at these equations, I realized
14 well, nobody is going to believe me. Mr. Harris is going to
15 start asking me questions, what are your credentials for
16 traffic. I'll talk about the statistics a little but, so I
17 realized, so I went and asked people in the math department
18 who do we know over in the traffic school and they said
19 well, there's Dr. Cinzia Cirolli (phonetic sp.). I keep
20 calling her Cirolli. I've talking to her for two days.
21 Cirillo. Dr. Cinzia Cirillo. She's very mathematical,
22 she's given lectures here, so I went to see her and it
23 turned out she works in exactly the right stuff. She's on a
24 bunch of European conditions. She works on (indiscernible)
25 mold choice which is the statistics of why people elect to

1 walk, what makes them walk, what makes them take cars. I
2 said wow, this is exactly the person I want. She's here. I
3 brought her here. The reason they're letting me -- she's
4 doing this for free. I offered to pay her and she said no,
5 no, don't pay.

6 MS. ROBESON: Okay. Well --

7 THE WITNESS: Should I go on? I mean, I guess I
8 made my point, right?

9 MS. ROBESON: Just a second. Hold up.

10 THE WITNESS: She's an international expert.
11 She's on several European conditions, committees.

12 MS. ROBESON: Okay. And you know what? We have a
13 resume and --

14 THE WITNESS: I can see that.

15 MS. ROBESON: -- there will be a time when she can
16 either qualify legally as an expert or she won't.

17 THE WITNESS: Okay. All right. I just thought
18 I'd --

19 MS. ROBESON: So that's --

20 THE WITNESS: -- put in a little pitch, you know.

21 MS. ROBESON: You don't have to pitch now.

22 THE WITNESS: Okay. But --

23 MS. ROBESON: And the other thing is you need to
24 give me your, what you've discovered and --

25 THE WITNESS: Yes.

1 MS. ROBESON: -- not what you heard from her.

2 THE WITNESS: Oh, yeah. That's why I went to see
3 her because of the statistics involved.

4 MS. ROBESON: All right. Well, you tell me --

5 THE WITNESS: So now I have to put on my glasses.

6 MS. ROBESON: Okay.

7 THE WITNESS: Where are my glasses? I'm an
8 absent-minded professor. Where did they go? Will these do?

9 UNIDENTIFIED SPEAKER: I don't know. I hope so.

10 THE WITNESS: They're pretty good. I need them
11 before I leave though. Okay. So what's going on is, so let
12 me sort of, so let me just look at this one equation for the
13 morning, T --

14 MS. ROBESON: Which is on Exhibit 153.

15 THE WITNESS: Yeah. $T = .48U$. Now, what this
16 formula predicts is no matter what kind of townhouse you
17 have, okay, whether you have a no-car garage, you're
18 unemployed, right, the number of trips you will generate,
19 you'll still have one unit, the number of trips you'll
20 generate is .48. Now, if you have, if you have a luxury
21 townhouse, these are all for townhouses, these equations, if
22 you have a luxury townhouse in Bethesda with a, with four
23 cars and you're a millionaire, you will still generate .48
24 trips.

25 The whole problem here is there's, and it's a

1 corresponding formula here, right, the whole problem is
2 they're missing variables. It's a very common mistake in
3 statistics. For example, it was used maliciously back in
4 the '50s and '60s to prove that black people weren't as
5 intelligent as white people. Why? They took standardized
6 tests and they didn't do as well.

7 MS. ROBESON: Okay.

8 THE WITNESS: But of course, they're missing out
9 on income so income wasn't considered. Missing variable.
10 The same thing was done to show that boys were better than
11 girls in mathematics, or in science because boys were doing
12 better on the tests. Why was that? Because of societal
13 conditioning. Girls were told you can't do that.

14 MS. ROBESON: Okay. So you --

15 THE WITNESS: I'm just saying there's this notion
16 of missing variables and this is a spectacular indication,
17 you know, instance of missing variables. I mean, nobody in
18 their right mind would say that the five-car garage
19 townhouse is going to produce the same number of trips as a
20 zero-car garage townhouse and yet, that's what the formula
21 used does. This formula is not just used by EYA. This is a
22 formula that's used all over the County.

23 MS. ROBESON: Yes.

24 THE WITNESS: So there's, there is a big problem.
25 That's what I was struck by when I saw this. There's a big

1 problem here. Now, if the EYA development was, sort of had
2 an average of townhouses, right there, some zero cars,
3 right, then this formula would work but this is all, these
4 are all two-car garages.

5 So this is again, they're all pretty affluent
6 people so if I can say her name again, Dr. Cirillo, Cirillo,
7 she has done studies. In fact, there are already, there's
8 already a great big study done by the Baltimore Washington
9 Metropolitan such and such of the whole area, including 260,
10 it's like 4,500 observations, 260 things from the Silver
11 Spring area, Silver Spring/Wheaton where they break down
12 these things in terms of various variables. The most
13 important variables are income and car ownership. And, you
14 know, basically what happens then is that these numbers for
15 townhouses become, if you have a two-car thing, they could
16 become essentially the same as for single-family homes.

17 The other reason I got into this was I thought
18 when I first saw those numbers, and I already talked about
19 this in the Planning, Planning Board, I thought well, I'm
20 going to check myself what the story is. So I went and I
21 actually did a little survey of the people on my street and
22 to me, of course, it's a different population. We can't
23 survey the townhouse owners because they're not there yet
24 but this is Springvale Road right across the -- I thought
25 first, they're going to be rather similar in income, they're

1 going to be rather similar in car ownership, most of them,
2 most of them have two cars, they're going to be, and the
3 critical thing, they're going to be the same distance from
4 the Metro. So the argument, this very much surprised me. I
5 thought well, there's going to be a lot of people walking to
6 the Metro.

7 Well, I have this study here. I'm going to give
8 copies to all of, to everybody here. I actually expanded a
9 little after I testified. I expanded to Springvale and what
10 I found was 24 out of the 33 people drove to work so then,
11 so, basically we do in statistics is you have, you take a
12 little sample, so that was my sample. And then I also
13 estimated to be two people in each townhouse, 152. So I
14 took this percentage of the people in the townhouses and I
15 came up with roughly, I got, it's all here, okay, written
16 out, but it's 111 trips in the morning alone. Other words,
17 based on my sample of the neighborhood.

18 So what this means is that -- now, I haven't, you
19 know, I haven't got enough of -- somehow they had to pay
20 some mitigation fee, fees, right, for this? I didn't
21 understand that yet. I didn't get that far. But as far as
22 I can see, that's because they're, like even based on these
23 very small numbers that they generated, namely the 26 and
24 the 63, whereas I'm up around 100, Cinzia is around 100 also
25 so there, so these are tremendously over, underestimating

1 the amount of cars, according to her very fancy statistics
2 and my little sample. That means that they, I would say,
3 would have to pay the County quite a bit more in these
4 mitigation fees except I don't, please don't ask me about
5 these because I didn't get that far in the report. I just
6 saw something about mitigation in here, okay.

7 But what really scares me -- and I'd like to just
8 finish with my, some of my other pictures. I guess two more
9 pictures, one of which I had at the Planning Board. And
10 that's, first is our traffic plan which is important to
11 understand.

12 MS. ROBESON: Okay. That's going to be 154.

13 THE WITNESS: I don't know whether I have copies
14 of these.

15 MS. ROBESON: That's okay. I can --

16 THE WITNESS: That's okay?

17 UNIDENTIFIED SPEAKER: That's fine.

18 THE WITNESS: Because one of the things I'm
19 worried about --

20 MS. ROBESON: Traffic plan.

21 THE WITNESS: So the traffic plan, it's important
22 for everybody to understand this. Want to mark it? Go
23 ahead.

24 MS. ROBESON: Thank you.

25 (Exhibit No. 154 was marked for

1 identification.)

2 THE WITNESS: These are general.

3 MS. SPIELBERG: 154?

4 MR. HARRIS: Yes.

5 MR. GACHEV: Excuse me. We have copies on the CD
6 version that are taken by the photo camera from a distance.

7 I don't know how valuable that's going to be.

8 MS. ROBESON: No. We can just use this. Thank
9 you.

10 THE WITNESS: So this -- so by the way, Dan Knopf,
11 who we've all been hearing about, he and I were two of the
12 main people putting in the traffic plan in the early 1990s
13 and our main concern, we had lots of meetings and our main
14 concern was cut-through traffic on Ellsworth, cut-through
15 traffic on the Beltway by, you know, Colesville is a mess.
16 So for people going to the central business district, we
17 were afraid they were going to cut through on these two
18 streets and come back the other way. That's what we were
19 most afraid of was this cut-through traffic.

20 MS. ROBESON: Now, you need to name the streets so
21 that --

22 THE WITNESS: So we were -- so Ellsworth and
23 Pershing run roughly parallel to Colesville and run right
24 into the central business district.

25 MS. ROBESON: Okay. Because this is recorded

1 because the --

2 THE WITNESS: Okay. Okay.

3 MS. ROBESON: -- County Council, so they don't
4 understand when you say these two streets.

5 THE WITNESS: Okay. So we were afraid of cut-
6 through traffic, people avoiding Wayne and Colesville by
7 going through the neighborhood on Ellsworth and Pershing.
8 Now, some of it worked, some of it didn't work because we
9 had, at one point, we were supposed to block off the traffic
10 here in the corner of Springvale and Pershing but many
11 people just shoot right on by there. At least some do. But
12 the one thing -- you know, we argued all along we want
13 physical constraints, we want bumps. They wouldn't give us
14 bumps but they did give us this roadblock right here.

15 BY MS. ROBESON:

16 Q Identify where it is.

17 A Right here. Right across from the library on
18 Ellsworth Avenue. See, you just --

19 MS. ROBESON: And what do you mean by roadblock?

20 THE WITNESS: You cannot go through here, okay?
21 You can go -- the road becomes one lane.

22 MS. ROBESON: So you can go one, there's a one --

23 THE WITNESS: You can go that way.

24 MS. ROBESON: One way south.

25 THE WITNESS: Yeah. One way towards the central

1 district.

2 MS. ROBESON: But you can't go north.

3 THE WITNESS: You can't go north.

4 MS. ROBESON: On Ellsworth.

5 THE WITNESS: On Ellsworth.

6 MS. ROBESON: Okay.

7 THE WITNESS: And then we were trying, we had a
8 huge bout with the library because we had some turn
9 restrictions here but now this block is pretty relevant to
10 what I want to talk about because here's, what do you call,
11 Private Road A, is that what you called it? So Private Road
12 A, people are going to -- and first of all, they have two
13 exist. Now, if they exit here on Ellsworth, they will not
14 be able to turn right.

15 Now, according to my, my, what I'm seeing, I would
16 say these people who are going to drive to work are mostly
17 going to want to get on the Beltway. That's a hypothesis,
18 I've got to admit, I mean, but there's the work areas on 270
19 right at the 270 Corridor, 95 Corridor, a lot of people work
20 in Virginia. My guess is a lot of those people driving to
21 work are going to want to work, want to get to the Beltway.
22 I said walk to the Beltway in my Planning testimony, said
23 walk to work. So anyway, they're going to drive to the
24 Beltway. So what they do is come out here. They can't go
25 through the neighborhood, thank goodness, so they're going

1 to turn here, turn here, but they're going to be stuck on
2 Colesville Road. Now, I don't know if people around here
3 have driven on Colesville Road in the morning, the rush
4 hour. It's unbelievable. Unbelievable gridlock, you know,
5 so what I would think is more of them are going to go this
6 way.

7 BY MR. BROWN:

8 Q Which way?

9 A This way. That's a very good question.

10 MS. ROBESON: You mean --

11 THE WITNESS: They're going to take this private,
12 they're going to take Private Road A out to Pershing.

13 MS. ROBESON: Thank you.

14 THE WITNESS: Now, they could turn right onto
15 Pershing. Right on Pershing, right, and then left on Cedar,
16 and then get on Wayne but Wayne is going, is another bad
17 street. So most likely they're going to go this way.
18 They're going to --

19 MS. ROBESON: North on Pershing.

20 THE WITNESS: -- turn left on Pershing and try to
21 get, avoid as much of Colesville as they can and get up to
22 Dale. And that brings my last picture, again drawn by my
23 partner.

24 MS. ROBESON: Okay. Let's mark that --

25 THE WITNESS: I need Anne again.

1 MS. ROBESON: -- Exhibit 155.

2 (Exhibit No. 155 was marked for
3 identification.)

4 THE WITNESS: My last picture drawn by my partner.

5 MS. ROBESON: And what is that picture?

6 THE WITNESS: It's a picture of traffic filtering
7 through the neighborhood.

8 MS. ROBESON: Okay. Traffic filtering around
9 Chelsea School.

10 THE WITNESS: Yes. So the idea is you have to
11 accept my premise that people are going to avoid Wayne and
12 Colesville and filter, try to go through Pershing. So my
13 pictures, well, here's all your people, your guys coming on
14 Private Road A, right, and now they're, you know, some of
15 them, of course there's some, they're not all going to take
16 the same road. They're going to try to get up here to
17 Ellsworth.

18 So basically, all I drew is like there's sort of
19 four streams, right. For one possibility, they can go over
20 to Ellsworth here.

21 MS. ROBESON: And that would be the red stream?

22 THE WITNESS: Yeah. The red stream, they'd go
23 right by my -- by the way, I should --

24 MS. ROBESON: Springvale.

25 THE WITNESS: Yeah. And by the way, I should say

1 before we had the traffic plan, every morning about 8:00,
2 there would be a huge stream of cars going this way from East
3 Silver Spring to the Beltway, and every afternoon about
4 5:00, there would be a big stream of cars going the other
5 way, you know, going down here, you know, to East Silver
6 Spring. Anyway, so we have, I admit, this is an hypothesis,
7 right, but, I mean, I make a lot of --

8 MS. ROBESON: Yes.

9 THE WITNESS: -- guesses about human nature but
10 Wayne, Wayne and Colesville are bad and if they ever build
11 the purple line, Wayne is going to be unbelievable but, you
12 know. So my main point I want to make with this picture is
13 there's going to be these sub-flows through the neighborhood
14 and if Cinzia and I are right about this formula, now this
15 formula is a much bigger issue, I've got to admit, because
16 I'm taking on the County here. I'm saying this County form
17 is wrong and that's going to take some selling, right, but
18 it's an important issue to address. If we're right, there's
19 going to be 100 cars coming out of here in the morning and
20 they're going to be filtering through the neighborhood. I
21 guess that's about all I have to say. I used all my
22 pictures. Thank you. Thank you for your patience.

23 MS. ROBESON: Okay. Now you need to leave the
24 pictures.

25 THE WITNESS: Oh, I have to leave the pictures?

1 MS. ROBESON: They're now our pictures.

2 THE WITNESS: Well, I'm going to look forward to
3 hearing from Mr. Harris I must say. I've learned that, I
4 have learned that Mr. Harris is one tough guy.

5 MS. ROBESON: Well, with that introduction, Mr.
6 Harris, do you have any questions?

7 MR. HARRIS: That's a tough act to follow.

8 CROSS-EXAMINATION

9 BY MR. HARRIS:

10 Q Millson? Mr. Millson?

11 A Yeah. Yeah.

12 Q Yes. Thank you. You've got four more degrees
13 than I do. I'm impressed by that. But with all due
14 respect, you're not a traffic engineer.

15 A I knew you were going to say that. I knew you'd
16 say that. That's why I --

17 Q The one degree you missed.

18 A Yeah. Absolutely. I am definitely not a traffic
19 engineer.

20 Q Okay. And you did clearly say that the traffic
21 standards which we followed are mandated by the County.
22 That comes from --

23 A Absolutely. Yeah. You did everything right. You
24 just took the equation that County says you should use this
25 equation, but what's at issue here is like okay, here's the

1 right equation but I'm the one who is going to suffer
2 because you used the right equation but the County provided
3 you with the wrong equation and as far as I can see, that's
4 going to lead to way too many cars in the neighborhood.

5 Q Okay. I have one quibble with you and your
6 analysis that the number of cars one owns dictates the
7 number of trips. I still think I can only drive one car at
8 a time even though I own more than one.

9 A But you own two cars. You have a wife.

10 Q She has a car.

11 A So the point is if you have two, two cars --

12 Q Two cars. The two of us can still only drive two
13 cars, right?

14 A That's true but a lot of these two-car garages are
15 going to have two people and each one is going to be driving
16 a car to work.

17 Q So it's not directly related to the number of
18 cars. Five cars doesn't equal more trips than --

19 A It's a very strong correlation between the number
20 of cars and the number of people, right? Most people, most
21 individuals are not going to own two cars. Do you agree
22 with that? Maybe you do but, you know, you're a wealthy
23 lawyer.

24 Q No. What I'm trying to point out is that no
25 matter how many cars are owned, they can only be driven by

1 the number of drives there.

2 A Well, you know, this is why you weren't --

3 Q So it's more a question --

4 A -- hearing it.

5 Q -- the number of drivers than the number of cars,
6 isn't it?

7 A Maybe, but this is why we need Dr. Cirillo.
8 That's what her site is all about.

9 Q Okay. All right. We will get into that. Thank
10 you. I don't know if you were here earlier but we were
11 talking about --

12 A I've been here the whole time.

13 Q Oh.

14 A I've been here the whole time. Planning Board,
15 all that seven hours of Planning Board --

16 MS. ROBESON: I think he meant today.

17 BY MR. HARRIS:

18 Q Today, yes.

19 A I was here today.

20 Q Yes, today.

21 A I got here late because there was an accident on
22 the Beltway.

23 Q Oh, okay. Were you here during the questioning by
24 Mr. Brown about 39 units being built on the property under
25 the existing zoning?

1 A About the cluster R-60, yeah.

2 Q Yes.

3 A I don't understand that too well I must say.

4 Q Okay. That's fine. Yes. You did understand,
5 though, that those units could front on Springvale Road?

6 A No. I understood. I got your picture that we
7 could, instead of looking at this, I guess you're saying
8 instead of looking at this broken up thing, we'd be looking
9 at this sort of nightmare sort of solid wall. Is that what
10 you're saying?

11 Q Yes. But more because of your issue in terms of
12 trips and traffic, I want to focus on that. They could have
13 driveways out to Springvale and so whatever number of
14 drivers, whatever number of cars are associated with those
15 houses, they would all be coming out onto Springvale, right?

16 A I got you.

17 Q Whereas you're aware that our plan has the traffic
18 going out Ellsworth and Pershing, not onto Springvale.

19 A I understand. I understand.

20 Q So the existing zoning could produce more cars on
21 Springvale than what we would produce.

22 A I don't, you know, this -- I don't know anything
23 about zoning at all. I mean, I wanted -- I don't think I
24 can really answer that question.

25 Q That's fine.

1 A Yeah.

2 Q Okay. I hope you'd find from seeing your
3 neighbors and those who you surveyed, et cetera, that
4 people's transportation patterns evolve over time. I know
5 my kids drive in a different manner than I do in terms of
6 frequency, and younger people typically are more prone to
7 public transportation. There does seem to be a trend
8 towards that I would think.

9 A I agree. And gas prices will also force people to
10 ride.

11 Q Absolutely.

12 A I understand. Definitely, you're correct on that.

13 Q Absolutely. And I grew up in Silver Spring. When
14 I grew up, you know, everybody drove everywhere. They
15 didn't walk --

16 A Right.

17 Q -- anywhere or bicycle anywhere. That's true.

18 A I lived in L.A. for ten years and that's --

19 Q Yes. So that's all changing. So wouldn't you
20 agree that the people moving into these new homes are not
21 necessarily the same profile as some of the existing
22 residents in your neighborhood?

23 A I mean, I don't think we -- you know, the whole
24 point is we can't say anything about those people until
25 they've moved in. That's why I took the example, you know,

1 of my existing neighbors but the closest, I mean, my street
2 is the closest approximation I can get to those people and
3 they drive so why would -- okay. Go ahead. Go ahead.

4 Q No. Go ahead.

5 A Why would the people moving in to the neighborhood
6 behave any differently from the people on my street? The
7 people on my street are young people. There's Michael and
8 Maria. They're not all 65 like me.

9 Q Some might behave differently, some might not.

10 A Yeah. I mean, it's hard, you know. The best
11 approximation I could make was the people on my street I
12 think.

13 Q Isn't it true though that increasingly, people who
14 are buying particularly new homes and paying even more for a
15 new home than you may, that your home may be worth, they are
16 buying into the Silver Spring phenomenon, if you will, the
17 walkability of the CBD, the fact that they can walk to
18 stores and restaurants?

19 A I admit. Like I walk to Whole Foods.

20 Q Yes.

21 A So but I -- the only thing I was measuring here
22 was trips to work, and can I use my saying again which I
23 liked so much in the first meeting? I said EYA says life
24 within walking distance. It doesn't mean work within
25 walking distance.

1 Q Some would be within walking distance though.

2 A But the work that -- I think what was going on in
3 my neighborhood, these people all walk to Whole Foods, they
4 walk to Ellsworth restaurants but they have to get to work.

5 If they don't work downtown, I thought more people would be
6 working downtown, if they don't work downtown, if they work
7 on the 270 Corridor, they work in Virginia, they've got to
8 drive and they're all going to be coming out at the same
9 time in the morning.

10 Q But you don't know how many are going to work in
11 270 versus downtown.

12 A I don't know. That's why I took the sample of my
13 street. I said Springvale Road, those people are going to
14 behave, that's the best, best approximation I have to the
15 people who are going to be moving into those townhouses.

16 Q Even what little I know about statistics, I would
17 have to say that six is hardly a valid statistical sample,
18 is it?

19 A Dr. Cirillo has 216.

20 Q No, but you're, we're talking -- she's not here
21 today.

22 A What I said, I have --

23 Q We have yours.

24 A I had more than six. I had --

25 UNIDENTIFIED SPEAKER: 280.

1 THE WITNESS: I had like 33 houses, 33 people.

2 MS. ROBESON: No assistance from the audience,
3 please.

4 THE WITNESS: So I had, I had 33 of my neighbors I
5 talked to, right, and 24 of them drove to work.

6 BY MR. HARRIS:

7 Q Okay.

8 A I'm going to give you this. In fact, I've got
9 plenty of them so here.

10 MS. ROBESON: Okay. This will be -- hold on one
11 second.

12 THE WITNESS: Here's one. I want to give it to
13 Mr. Harris.

14 MR. HARRIS: Thank you.

15 THE WITNESS: And then I'll give her one.

16 MR. ROBESON: Well, if you give it to the other
17 side --

18 THE WITNESS: Oh, yes. Oh, yes.

19 MS. ROBESON: -- we're going to put it in the
20 record.

21 THE WITNESS: Oh, that was the wrong one I gave
22 you. Here's one. Here's one for you.

23 MS. ROBESON: Thank you.

24 THE WITNESS: Here's a better one, Mr. Harris,
25 since I reproved it.

1 MS. ROBESON: This is 156.

2 (Exhibit No. 156 was marked for
3 identification.)

4 THE WITNESS: And it's on page, all this, all my
5 studies are like a study of the households on Springvale
6 Road. Did you find that? It's a couple pages long.

7 BY MR. HARRIS:

8 Q What you're saying is my statistics professor is
9 still giving me homework for tonight.

10 A Oh, yeah.

11 MS. ROBESON: Okay, wait. Before we go anywhere,
12 it's Exhibit 156. Is this your written summary of your
13 testimony?

14 THE WITNESS: Yeah. That's my written summary of
15 my testimony.

16 MS. ROBESON: Okay. Written summary of Millson
17 testimony.

18 (Discussion off the record.)

19 BY MR. HARRIS:

20 Q One other question. Irrespective of the number of
21 people who work in the 270 Corridor, Northern Virginia or
22 D.C., wouldn't you agree with me that if you were going from
23 Chelsea to Northern Virginia or towards 270, one wouldn't
24 drive out of Colesville Road to the Beltway. One would go
25 Cedar Street, Spring Street and out Georgia Avenue. It's

1 considerably shorter, isn't it?

2 A I never got that way. Cedar Street --

3 Q Hum.

4 A Cedar Street, Spring Street. You know, first,
5 there's always construction on Spring Street. First you
6 have -- so there's a light at Colesville. Then there's that
7 light, what is that, Cameron and Spring? So --

8 Q So you wouldn't go the shorter distance?

9 A That's right.

10 Q You would go the longer distance.

11 A Yeah, because after all, you want the less --

12 Q Okay. Even with the traffic on Colesville Road,
13 you would take that congested route?

14 A So you're saying how do I go the Beltway? Yeah.

15 Q No. Not towards College Park. Towards Northern
16 Virginia.

17 A No, I understand. When I go to College Park, I
18 just go all kinds of side streets.

19 Q Okay.

20 A No. I would go. I go up Ellsworth and actually,
21 I go up Pershing and I'd do exactly the way my picture says.
22 I drive through the neighborhood, probably shouldn't, but I
23 drive through Pershing. I turn left on Dale, right?

24 Q Okay.

25 A I stay off Colesville.

1 Q Okay.

2 A Have you driven on Colesville at all in rush hour?

3 Q I have, yes.

4 A Well, you know what it gets like. I know you
5 know.

6 Q Yes. Which is why I would go Cedar to Spring but,
7 you know, your choice. Aren't there traffic restrictions on
8 Pershing headed, I'll call it northbound from the Chelsea
9 School?

10 A That, I don't -- I'm not sure but I don't think
11 there are. I mean, people do not, you know, most of these
12 traffic things aren't enforced so there, you know, you see
13 all kinds of behaviors there. I think you guys are allowed
14 to turn left there. I certainly hope so because, I mean, of
15 course if you didn't, it would remove all my problems. I'd
16 be, I'd be way happier if all you guys had to turn right,
17 you know, I must admit. But if you're only allowed that
18 right turn on Pershing, my problems would go away because
19 you couldn't come into the neighborhood going, you know what
20 I mean --

21 Q Right.

22 A -- you couldn't go into the neighborhood either
23 way and we'd be totally protected so that's what we're
24 getting at, right? Certainly, if you were, if that left
25 turn was forbidden, you know, then there would be no problem

1 with traffic coming out of, out of Chelsea School for the
2 neighborhood at all.

3 Q Okay. Then under that scenario, if there were 76
4 townhouses and the historic house all accessing that way,
5 that would be a better situation than 12, 13, 14 houses on
6 Springvale.

7 A I'm not, I'm not going -- well, you know, but
8 we're talking traffic now, you know, there's all sorts of
9 other problems. I mean, to me, all these questions and
10 answers. I would say, to me I'd say the less the better,
11 you know.

12 Q Okay.

13 A I mean, somebody raised the issue like you guys
14 got to make money, you know, so there are lots of other
15 questions here.

16 Q Yes. Okay. Thank you.

17 A Thank you.

18 MS. ROBESON: Mr. Brown?

19 MR. BROWN: I do have one question. Hang on just
20 one moment.

21 REDIRECT EXAMINATION

22 BY MR. BROWN:

23 Q All right. Mr. Millson, I'm going to show you
24 what's been marked as Exhibit 149.

25 A I just gave the glasses away. Yeah, okay.

1 Q That's all right.

2 A I think I don't need them.

3 Q The testimony earlier was this is a diagram that I
4 put together in which the Private Road A was blocked off on
5 the east side so that all people would come in and out of
6 the project from the west side. What would be your traffic
7 concerns if this were the configuration?

8 A That would be even better. I mean, it would be
9 even better than what Mr. Harris suggested because everybody
10 would have to come out -- it would be blocked from going
11 into the neighborhood. They'd all do it Mr. Harris' way
12 essentially. They'd all go, you know, Cedar, you know,
13 Spring to Georgia. This would be by far the best for us.

14 MR. BROWN: No further questions.

15 MS. ROBESON: Okay.

16 MR. HARRIS: Nothing.

17 MS. ROBESON: All right. Mr. Millson, thank you.

18 THE WITNESS: Thank you.

19 MS. ROBESON: You're excused as a witness.

20 THE WITNESS: Thank you. I'm going to take our
21 expert home now.

22 MS. ROBESON: Okay.

23 THE WITNESS: She's just been sitting through
24 this.

25 MS. ROBESON: Your next witness or a next witness?

1 Mr. Brown, is this, is he testifying independently?

2 MR. BROWN: (No audible response.)

3 MS. ROBESON: Okay, great.

4 MR. GACHEV: I think I need one minute just to set
5 up the laptop and connect it to a projector. Is that okay?

6 MS. ROBESON: Okay. Let's take five minutes and
7 -- wait a minute. What do you have to do?

8 MR. GACHEV: I just have to, because I have a
9 slide show to present so I would like to hook up the laptop
10 to a projector.

11 MS. ROBESON: Oh, I thought there was more to it
12 than that. Okay. That's fine.

13 (Discussion off the record.)

14 MS. ROBESON: How many other people want to
15 testify in opposition today?

16 MS. SPIELBERG: I have on my list of people who
17 need to -- I believe I have three others.

18 MS. ROBESON: Okay. Can someone else testify
19 while he's setting up?

20 MS. SPIELBERG: Sure.

21 MS. ROBESON: Why don't we do it that way and it
22 will speed things along a little bit.

23 MR. HARRIS: Anne, these are people who can't be
24 here on the 30th?

25 MS. SPIELBERG: Correct.

1 MR. HARRIS: Okay.

2 MS. SPIELBERG: That is correct.

3 MR. ARMSTRONG: My name is Tom Armstrong. I live
4 at 606 Greenbrier Drive.

5 MS. ROBESON: Okay. Please raise your right hand.

6 (Witness sworn.)

7 MS. ROBESON: Okay.

8 DIRECT EXAMINATION

9 THE WITNESS: As I said, I'm Tom Armstrong. My
10 wife, Anne, and I live together, have lived at 606
11 Greenbrier Drive for the last 18 years. We're about two-
12 and-a-half blocks from the Chelsea School site. And we, as
13 did others, moved to this area because we wanted a
14 neighborhood of single-family detached houses, trees, yards,
15 quiet streets and all of that, and we have found all of
16 that, not just the house with a yard but also a community
17 that we've really become attached to.

18 I've been active in the, in SOECA since the time
19 that we moved in. I'm currently the secretary of the
20 association. I've been delivering newsletters to houses on
21 my block and on other blocks for the last 15 years or so so
22 I've, I've been, I've been an active participant in this
23 community for a long time.

24 Our neighborhood has seen two significant areas of
25 development in the last 25 years that others have mentioned.

1 The first, of course, are the properties on Ellsworth Court
2 which were built in the first years of the 1990s or right
3 around 1990. The second is the Watts property along the 800
4 block of Woodside Parkway on which a cluster of 19 houses
5 was built in 2002. And in both cases, higher density
6 development was initially proposed and in both cases, the
7 County, in its wisdom, decided that the higher density was
8 not appropriate for the neighborhood and as a result, we see
9 today two groups of single-family detached houses that are
10 compatible with the neighborhood, are constant with the
11 master plans that were in place when they were built and
12 contribute to the diversity of housing in the neighborhood
13 from the very large 3400 square foot houses on Ellsworth, on
14 Woodside Parkway to the much smaller houses, for instance,
15 that are behind us on Dartmouth Avenue.

16 The hearing today concerns another attempt to put
17 high-density development in our neighborhood. Changing the
18 zoning to townhouses at this density runs directly counter
19 to the plain language of the master plan as I read it,
20 expands the buffer along Cedar Street sited in the master
21 plan, permits a transition behind a transition and the
22 density and its massing make it incompatible with the houses
23 that surround the site on three sides, and you've all of
24 that before.

25 An important measure of this incompatibility is

1 the reception that the townhouse proposal has received from
2 the residents of the neighborhood. You've heard about the
3 survey of the very near neighbors that SOECA carried out,
4 that the task force carried out. I have been active, in
5 subsequent months, in addition to helping carry out that
6 survey, in gathering opinions from the residents of the
7 neighborhood.

8 So the opposition that was first, first expressed
9 formally by SOECA with our vote in the, in our meeting is,
10 continues and I have been, I've been, along with several
11 other, a number of other residents of the area, I've been
12 circulating a petition which reads, quote, "We, the
13 undersigned residents of the Seven Oaks-Evanswood
14 neighborhood in Silver Spring, oppose any change in the
15 zoning of the Chelsea School site located at 711 Pershing
16 Drive and lying between Pershing Drive and Ellsworth. This
17 property is currently zoned R-60 single-family residential.
18 Re-zoning this property for a higher-density development
19 such as townhouses would violate the North and West Silver
20 Spring Master Plan of 2000 and would permit high-density
21 development in the interior of our neighborhood, to its
22 detriment.@"

23 Now I -- you, of course, have explained to us that
24 we don't do zoning by plebiscite. My argument in favor of
25 these, these petitions is that it is, that an appropriate

1 measure of the compatibility of a development like this is
2 the opinions of the people who have been living in the
3 neighborhood and in particular, of the people who live close
4 to the subject site. To date, I have, we have signatures
5 from 266 residents, from 190 residents, households, in the
6 Seven Oaks-Evanswood neighborhood. It's instructed to look
7 at the results in particular from the streets that would be
8 mostly affect, most closely affected by the development.

9 The 8600 block of Springvale Road, five out of six
10 households have signed and the sixth house is owned by an
11 absentee landlord. This block directly faces the Chelsea
12 School site. The 85 and 8600 blocks of Cedar, several of
13 which are special exception uses, 4 out of 12. Many of the
14 others are a little difficult to contact so -- the unit
15 block of Springvale Lane, there are four households there,
16 three of them have signed the petition. The 700 block of
17 Pershing Drive. Five out of six households have signed.
18 This block faces the site.

19 The 8500 block of Springvale Road, all five
20 households have signed. This block would be a primary route
21 for townhouse residents to reach the site from Wayne Avenue.
22 The 5, 6 and 700 blocks of Pershing Drive along which much
23 of the traffic that John Millson was forecasting would take
24 place, 29 out of 35 households have signed. Along Ellsworth
25 Drive, the 500 and 600 blocks, there are no houses along the

1 700 block, 14 of 19 households have signed. These blocks
2 would be the other primary route from, for townhouse
3 residents to drive from Dale Drive. They would come from
4 Dale along Ellsworth and then take the left on Springvale,
5 for instance.

6 Over the last several decades, the residents of
7 Seven Oaks-Evanswood, old and new have relied on the
8 County's commitment to develop the neighborhood in a way
9 that maintains its character as a neighborhood of single-
10 family detached homes with quiet streets. The County's
11 master plans have been written, have been the written form
12 of that compact with the residents, and the County's long-
13 established system of planning has upheld the provisions of
14 those plans.

15 Today's residents of Seven Oaks-Evanswood, and
16 especially those living close to the Chelsea site, have made
17 it clear that the townhouse development proposed for this
18 site is not compatible with the neighborhood, so I urge you
19 to recognize that townhouses are not an appropriate or that
20 townhouses at this density are not an appropriate or
21 compatible use of the site, to protect Seven Oaks-Evanswood
22 from this high-density incursion into the interior of our
23 neighborhood and to recommend against the adoption of this
24 zoning change. Thanks for your consideration.

25 MS. ROBESON: Thank you. Mr. Harris?

1 THE WITNESS: Oh, and I have with me the petitions
2 and summary sheets of the petitions, copies for Mr. Harris,
3 and these are ours and then these are the, these are
4 actually the originals of the petitions for you.

5 MS. ROBESON: Well, I will -- as you know, as I
6 said --

7 THE WITNESS: Yes.

8 MS. ROBESON: -- we can't re-zone simply by
9 numbers or deny re-zoning simply by numbers. I will take
10 them in unless, I will take them in and give them the weight
11 that I can legally but I'll tell you now that the number in
12 and of itself is not a legal criteria for approval or
13 disapproval.

14 THE WITNESS: I understand that.

15 MS. ROBESON: Okay. So that's --

16 MS. SPIELBERG: Is that 15 --

17 MS. ROBESON: -- 157, petition.

18 (Exhibit No. 157 was marked for
19 identification.)

20 MS. ROBESON: I'm sorry, Mr. Harris. Did you have
21 any questions?

22 MR. HARRIS: Yes, please.

23 CROSS-EXAMINATION

24 BY MR. HARRIS:

25 Q Obviously, I've just been handed this petition and

1 it's got a lot of pages so I can't go through it but quickly
2 thumbing, I see addresses on Sligo Street Parkway and
3 elsewhere. That's pretty much nowhere near the site, isn't
4 that correct?

5 A There are a few that far out, yes.

6 Q Back when SOECA opposed the Chelsea School special
7 exception, you were active in SOECA then?

8 A I was active. I wasn't as active then as I am
9 now.

10 Q You said you've been active in SOECA since you
11 moved in.

12 A Yes. I have been.

13 Q So you were active back then.

14 A I was not as active then as I am now.

15 Q But you were active.

16 A Yes, I was.

17 Q Okay. And were you aware of the SOECA opposition
18 to Chelsea School's expansion?

19 A I don't specifically recall that opposition at
20 this point.

21 Q Had you seen Mr. Knopf's letter before?

22 A I don't believe I had seen that, no.

23 Q Were you opposed to the Chelsea School special
24 exception personally?

25 A I was not personally opposed to it.

1 Q Would you be in favor of it?

2 A Do you mean if it were proposed today?

3 Q Today.

4 A Yes, I would be.

5 Q And did you support it then?

6 A I don't think I took an active role in supporting
7 it, no.

8 Q You mentioned other properties in the area that
9 have developed at lower densities. I don't believe any RT
10 zoning was denied for any of those projects, was it?

11 A I don't know what the details of what zoning
12 proposal, what zoning changes might have been proposed.

13 Q I think it's what the property owner or developer
14 proposed was what got developed.

15 A As I recall, original proposals were at higher
16 density and what got built was at, of course, the densities
17 that we now see.

18 Q But they never filed applications for higher
19 density.

20 A I don't know that.

21 Q Is six units an acre high-density development?

22 A That's about 7,000 square feet a lot. No.

23 That's, I wouldn't call that high density.

24 Q How about seven?

25 A Seven?

1 Q Units per acre.

2 A That's a little bit higher.

3 Q Is that high density?

4 A I -- you're trying -- you would like a threshold
5 from me for high density.

6 Q Let's go to that.

7 A That's a fuzzy thing.

8 Q Okay.

9 A So it's hard, it's hard to give a hard-edged
10 answer to a fuzzy thing.

11 Q Would your petition define this as high-density
12 development?

13 A Yes. This is the highest density townhouse
14 development available.

15 Q So does that make it high density?

16 A In my book it does, yes.

17 Q And so how much lower would be -- is 10 units an
18 acre high density?

19 A I would -- perhaps it would help if I said that I
20 think a factor of two lower would be about the threshold
21 that I would find, that I would like.

22 Q I'm sorry. Explain that. I didn't follow that.

23 A fact --

24 A That means if you took the, on this specific case,
25 if you took the 76 townhouses and divided that by 2 --

1 Q Oh.

2 A -- so that you ended up with 38, something like
3 that would be an acceptable level of density I think.

4 Q Okay.

5 MR. HARRIS: I have no further questions.

6 MS. ROBESON: Mr. Brown, any questions?

7 MR. BROWN: No questions.

8 MS. ROBESON: Okay. Thank you. You can be
9 excused. Okay.

10 MR. GACHEV: We're all set up.

11 MS. ROBESON: Okay. Please state your name and
12 address for the record.

13 MR. GACHEV: My name is Ivaylo Gachev and I live
14 at 8504 Springvale Road.

15 MS. ROBESON: Okay. Please raise your right hand.

16 (Witness sworn.)

17 MS. ROBESON: Okay.

18 DIRECT EXAMINATION

19 MS. ROBESON: Can you please tell me in what
20 format you have this slide presentation?

21 THE WITNESS: Two, three formats. I have it in
22 paper, I have it in PDF and in Word form.

23 MS. ROBESON: Okay. What I'd like to do,
24 everything that I discuss has to be part of the record. Can
25 you submit a hard copy of this?

1 THE WITNESS: I can, I can do that.

2 MS. ROBESON: And I will mark it as 158.

3 (Exhibit No. 158 was marked for

4 identification.)

5 MS. ROBESON: Does it have a title?

6 THE WITNESS: Not really.

7 MS. ROBESON: And has Mr. Harris or Mr. Brown seen

8 this?

9 THE WITNESS: No.

10 MS. ROBESON: Not yet. Okay. I'll mark it for

11 the time being as 1 --

12 THE WITNESS: This is a CD if you need it.

13 MS. ROBESON: No. This is fine.

14 THE WITNESS: Okay.

15 MS. ROBESON: And it will be slide presentation.

16 Mr. Harris, do you need the paper copy here?

17 MR. HARRIS: The paper copy, well --

18 THE WITNESS: I have another one for him.

19 MS. ROBESON: Oh, okay.

20 THE WITNESS: I just want to give, hand piece by

21 piece while I'm talking.

22 MR. HARRIS: Oh, you're going to use that to talk

23 through your slide thing?

24 THE WITNESS: Yes.

25 MR. HARRIS: Okay.

1 THE WITNESS: There's not that much to -- most of
2 the pictures are self-explanatory. While I'm here today,
3 actually, I just want to give you the different idea of our
4 neighborhood because we've seen a lot of different pictures
5 from the previous slide. Lots of them, a lot of them,
6 they're gray, a lot of the satellite pictures are during the
7 winter and you can't really see the character of our
8 neighborhood and that's why my, my main purpose, just to
9 guide you through our neighborhood and show you our
10 neighborhood and a few other sites through my eyes while I
11 was walking and taking those pictures.

12 I'm sorry for it's not, it's not perfectly
13 squared. This is a satellite picture actually showing our
14 neighborhood to the right of central business district. You
15 can see in the red, I put our border between, the border
16 between CBD and our neighborhood. On the right is our
17 neighborhood. You can see the Chelsea School site. This is
18 just to give you an idea.

19 MS. ROBESON: Outlined in yellow?

20 THE WITNESS: Yes. The outline --

21 MS. ROBESON: And labeled?

22 THE WITNESS: -- outline in yellow. The next
23 picture is viewed from the corner of Pershing Drive and
24 Springvale Road, and that's towards central business
25 district. And direction I put south/southwest. It's

1 actually actual street view direction. It's not, I'm not
2 referring to this --

3 MS. ROBESON: In relation to the Chelsea School?
4 Is that your south/southwest as you take the picture or is
5 that south/southwest of the site?

6 THE WITNESS: It is, I took the picture, I took
7 the picture this way.

8 MS. ROBESON: Okay.

9 THE WITNESS: So you can see the diversity of the
10 houses, the vegetation, the green vegetation here and as you
11 can see, those pictures are, that how our neighborhood --
12 I'm sorry it's not brighter. Unfortunately, it's not
13 brighter. You can really see the difference between CBD,
14 which is the very gray area, and our neighborhood, which is
15 like a lot of vegetation, a lot of, a lot of trees, a lot of
16 character, green, green areas. Let's go forward.

17 This is a view from the corner of Pershing Drive
18 and Springvale Road towards Wayne Avenue, and this is the
19 street that I live on. I have to say, this is, I live right
20 about here somewhere, and this area here is Springvale
21 Terrace and although, you can see that although there's the
22 Springvale Terrace here on one side, there are a lot of
23 detached homes, single-family homes, I'm sorry, on this
24 street. Next picture.

25 Next picture is view from the corner of Pershing

1 Drive and Springvale Road towards Dale Drive. We can see
2 the difference, different houses that there are on the
3 street. Obviously, people take care of their lawns. I
4 often walk my dog here. We take, even though there are no
5 sidewalks, people use this road because there's not much
6 traffic, so people use it to walk. I'm using it,
7 personally, to walk and especially during the, like, late
8 afternoon, you can see a lot of people walking their dogs,
9 going to downtown, just walking even though there are no
10 sidewalks there. So let's move to the next one.

11 View from the corner of Springvale Road and
12 Springvale Lane towards Wayne Avenue, and these are also
13 some of the houses along Springvale Road. I just want to
14 show you how, how diverse these houses are. They're not
15 just, you know, just brick houses from, boring houses from
16 1930s.

17 Next one, Chelsea School property. I've seen a
18 few pictures that depict the Chelsea School property as very
19 unattractive property and that, I didn't like personally
20 that because I, I know this property and I don't think it's
21 unattractive. Actually, I think it has a lot of character.
22 Maybe in the wintertime, nothing is attractive but I don't
23 know, but I just want to show you. The first picture is
24 view from the Pershing Drive towards the driveway of Riggs
25 Thompson historic property. And this is right here on the

1 right corner. You can see where I'm, where I'm standing.
2 The red, the red dot is me and I'm looking towards the
3 driveway.

4 MS. ROBESON: Now, wait. Now, where's your red
5 dot?

6 THE WITNESS: It's here. It's very --

7 MS. ROBESON: Are you on the southeast corner of
8 the Chelsea School property?

9 THE WITNESS: It would be opposite northwest which
10 is southeast, yes.

11 MS. ROBESON: Okay.

12 THE WITNESS: And on the left, you can see all
13 these tall trees. Once again, unfortunately, the pictures
14 are not too bright. Again, a lot of trees. On the, on the
15 lower picture, it's approximately, same direction, it's
16 west/northwest I'm looking and this is from the corner of
17 the driveway of the same property. We can see all these big
18 trees, picnic bench underneath that people can use, a big
19 green space. It's really big.

20 Next thing, next picture -- I'm sorry. I didn't
21 explain where I'm, where I'm at.

22 MS. ROBESON: Let me just ask you. The red dot on
23 the right-hand pictures are you --

24 THE WITNESS: It's really me, me --

25 MS. ROBESON: -- where you're taking the picture

1 from, the direction your looking. Is that correct?

2 THE WITNESS: I'm the red dot and the red line
3 here is where I'm taking the picture towards.

4 MS. ROBESON: Okay. That's fine.

5 THE WITNESS: And, I mean, on left side, you can
6 see the tall trees are, they're probably left over from, if
7 I can say left over, from the forest that was part of the
8 farmlands before. And on the lower picture, you can see
9 what devastating effect can have only one single tree if
10 it's cut down, how it changes the entire thing. I don't
11 know the reason why they cut down the tree but you can see
12 how just one tree can change the entire view, and these are
13 not, these are not small trees. They're not six, eight feet
14 tall. They're tall. And if that's gone, the tall picture
15 will be, it will be completely different.

16 It will -- I mean, I know the idea of putting new
17 trees but new trees, first of all, is going to take awhile
18 to grow. Second, they are not going to be as tall as these.
19 I, actually, I have, I hope I'm not going to forget, I have
20 a picture of those ornamental trees that they are usually
21 put around townhouses and but we'll get to that.

22 During, during my walk on the property, that was,
23 I believe, Sunday morning, there was a family playing
24 baseball there and there's a lot of green space for maybe
25 another five of these families to play, to play there with

1 their kids, to play their games. Actually, I didn't put it
2 here. After the last time we've been in this room, after,
3 after this, we went home and I asked my wife let's walk on
4 the property, let's, let's see how, let's memorize it the
5 way it is. So we walked. It was like almost dark and there
6 were people playing golf there. There were people playing
7 golf.

8 Let's move to the next part which is called the
9 buffer. The buffer is really our Cedar Street, the buffer
10 from the central business district. This is for this slide.
11 Okay. This is a view from our neighborhood, the first
12 picture, the very first upper left corner picture is the
13 view from our neighborhood towards central business district
14 and you can all see how gray it is, minimal vegetation and
15 in fact, I want to point, too many coffees this morning, I'm
16 sorry, these trees here, when you're talking --

17 MS. ROBESON: Now, you've got to describe. You're
18 in the --

19 THE WITNESS: I'm sorry. On the left, on the left
20 upper picture, I'm pointing, this is, I believe, Pershing
21 Drive still. It's behind --

22 MS. ROBESON: So it's --

23 THE WITNESS: It's behind Cedar, Cedar Street.

24 MS. ROBESON: Okay.

25 THE WITNESS: Okay. So these trees are ornamental

1 trees that they are used to be planted around the, the
2 townhouses. I've seen them before. Nobody plants these
3 kind of trees on the right, you can see on the right
4 pictures, nobody plants that kind of trees. On the right
5 side is, in a contrast of the left picture, I want to show
6 you the right picture which is a view from CBD towards our
7 neighborhood towards Pershing Drive and Cedar Street, and
8 you can see, and you can see the difference. I don't --
9 it's green, it's alive and we have, in comparison to gray
10 and buildings, no trees, just a few small trees there.

11 Next picture, this is view of Cedar Street, both
12 directions. I'm standing, I'm right on this opposite --

13 MS. ROBESON: You mean the top two pictures?

14 THE WITNESS: Top two, I'm sorry, top two
15 pictures. I'm looking to, I'm standing on the corner of
16 Cedar and Pershing from the CBD side, and the first picture
17 to the left, I'm looking to Cedar Street to the right.

18 MS. ROBESON: Okay.

19 THE WITNESS: And vice versa, the right picture,
20 I'm looking to the left and those are underneath, the three
21 pictures underneath are the houses that are on Cedar Street,
22 located on Cedar Street. As you can see, they're not,
23 they're not tall, they're not four-story buildings. They're
24 still people living there. They're single-family houses and
25 again, diversity of, of even architectural diversity of the

1 house. Those are more, more of the houses. This is four,
2 these are four different houses again located on Cedar
3 Street and these are variable locations. They're not,
4 they're not all the houses.

5 Okay. And we got -- I'm sorry I didn't give
6 you --

7 MR. HARRIS: That's okay.

8 THE WITNESS: Okay. I want to talk about Cameron
9 Hill Silver Spring. It's going -- I will try to, to not go
10 deep into that but it, it strikes me because there -- we
11 have to -- I was curious to see because I heard a lot of
12 good things of all the development, of all the nice words,
13 let's say, this week, so I was curious. I was like okay,
14 let me see, let me go to actual -- because I went to web
15 page and from the web page, you cannot have, there are
16 pictures there but you cannot have the sense of what's all
17 there so I was like okay, let me see what EYA build and see
18 if I like it. I may like it.

19 I visit the site. This is the, actually, this is
20 a picture from Google Maps. This is another, another
21 satellite picture I will say, 3-D picture of Cameron Hill,
22 Silver Spring, Silver Spring, Maryland. And the next
23 picture is view from Cameron Hill over row houses located on
24 Ramsey Avenue. What struck me here is these houses are so
25 narrow and particularly, I measure only one, I didn't have

1 time or -- there's right on the corner of Ramsey and I
2 cannot recall. I just remember this. At the end of this
3 row, there's a house that is just, I believe, 14 feet, let
4 me see, wide. Sixteen feet wide. And what grabbed my
5 attention was they're so narrow, smooshed, kind of cramped
6 next to each other but I was, I was too willing to see
7 what's, what's there.

8 So I walked the perimeter and what I saw was a
9 lack of architectural diversity. Some of these houses, not
10 some of them, I can, I can distinguish three or four maximum
11 houses that they are maybe the windows are changed or at
12 some point, the next picture, you can see at the bottom,
13 they totally ran out of ideas and just painted white and
14 that, I don't think something like this will contribute to
15 the diversity of my neighborhood. And why? It's because of
16 the next picture. This is the houses. These are six
17 pictures of real architectural diversity of single-family
18 houses around Chelsea School and particularly, on Pershing
19 Drive, Pershing Drive. And you can see the difference.
20 It's totally, totally incompatible with each other.

21 There are more pictures. These are on Springvale
22 Road and Springvale Lane. More diversity. Even, you can
23 see even though they're built with bricks, they, every, each
24 house has its own character. There are more pictures and
25 including Cedar Street, we can see that Cedar Street has

1 such a, such a diversity in the architecture of these
2 houses.

3 And now, the next thing, why I put this here
4 because I saw something that probably is going to shock most
5 of the, most of the people here and I don't know how to
6 present it to them and my hands are shaking because what
7 they're going to see, it's, I mean, you -- so why I put,
8 okay, why I put this here is because when I, let's say I'm
9 homeowner and I need repair or something to be built in my
10 backyard. I don't hire somebody just for showing me a plan
11 what he's going to do and how he's going to proceed and what
12 are the deadlines or what he's going to accomplish. I have
13 to check his, what he done in the past, and I have to make
14 sure that other people like him before I hire him. That's
15 why I put this here. And why I put this here is because of
16 the next picture.

17 This is the back, the backyards of Cameron Hill
18 urban rural houses. This is how their backyards look like.

19 I don't know whether you want to call it backyards or not.

20 These are their garages. Again, I don't understand. Are
21 they two, I don't know, are they a two-car garage or one-car
22 garage. That, that doesn't, I don't care about that but
23 look at this. How this, how this is compatible to where we
24 live? How this concrete and this is -- I mean, to me, this
25 is ugly. I don't know how the other people feel.

1 And why I think this is ugly because this is our
2 backyards right here. Look at our backyards. On the upper
3 left corner, this yard is my yard. How, how this, how this
4 right here is compatible this, I'm sorry, to this one? And
5 nothing that is here it convince me that somebody's going to
6 work for my interest.

7 Other thing, because I guess I discovered I didn't
8 thought about this but later did, I said and, well, is the
9 accessibility because -- I want to, I want to cite something
10 that my wife said. She said that townhouses, they're
11 usually, by their nature, they're close communities and we
12 have this idea here that this is not going to be close
13 community and so on and so forth and we had a lot of, a lot
14 of talk about smart growth. I don't want to go there, I'm
15 not an expert, but I was curious about a few factors here
16 and I'm going to explain what these lines are, what they
17 mean.

18 Okay. The green line, the green lines around the
19 property, they indicate where there's a public access for
20 people with disabilities. Red lines indicate non-accessible
21 entrance for the people with disabilities to the backyard
22 areas, and this is a bigger picture. So this, these are
23 accessible. Green lines are accessible points and these are
24 around the property once again. The red dots are just parts
25 of the sidewalk that allows, that they're narrow, narrower

1 than the other part.

2 Red dots, red, I'm sorry, red lines here, the
3 first red line is located on the south part of my picture
4 and the other red dot is located on, let's say west part of
5 my slide. We can see here the red lines. I took a picture
6 of these, these walkways towards the inner part of the, the
7 urban row houses and you can see they're, I mean, probably
8 you can't see very well but there are stairs. There are
9 stairs. There are lots of stairs, especially on the left
10 picture.

11 What I want to show you, I'm sorry, something
12 else. Orange lines indicate narrow limited non-accessible
13 sidewalks for people with disabilities. I mean, we're
14 trying to be friendly and open but in the same time, okay,
15 let's, you're welcome but kind of stay away. That's how I
16 feel it. I didn't, I'm sorry, I do not have the tape
17 measure so I kind of took picture of my sneaker so I can
18 give you an idea how wide these sidewalks are. You can see
19 on the lower right picture, there are sidewalks narrow as
20 four feet high curb, high curb. Totally not accessible.

21 And, and once again, I don't want to get, I'm not
22 an expert in smart growth and things like this but don't we
23 have to make it accessible to everyone? Like we're saying
24 that the new property is going to be accessible, you can
25 walk, but I don't see anything in the property built before

1 this and this is in the heart of Silver Spring. This is
2 within, not even walkable. It's so close to the Metro.
3 It's just like one intersection away. You just cross the
4 street and you're in the Metro. And you, and yet, you don't
5 have these essential things that they are required, even
6 like -- well, we have them around the perimeter which is
7 pretty much County area and probably they're required. I
8 don't know about that.

9 And other thing, the last, and this is the last
10 part of my slide, a single unit on Cameron Hill has external
11 staircase starting from two stair staircase and going all
12 the way to 10 steps staircase. And once again, before,
13 we've heard about the diversity of people that the new, the
14 Chelsea School property, the new townhouses, the diversity
15 of people that they're going to attract. How are you, how
16 are we going to attract like people over, let's say 79, 80
17 when we have 10, 10 step staircase. Not, not including the
18 internal staircase which for three-story building will be I
19 don't know. Personally, I will buy maybe ranch style house
20 which is one floor if I'm 70. I'm not ever going to buy
21 something like this where I have to walk up the stairs all
22 the time.

23 I have to, just to clarify something, the two
24 steps, the two step staircases, they're really one step and
25 then there's a doorway step but in terms of accessibility,

1 we can count this as two steps because I don't want to
2 explain to a person with disability that this is not two
3 steps. He just imagines something. And pretty much, this
4 is the last piece of my slideshow.

5 I just want to say a few things. I move 2008 with
6 my wife here. We were living, we were living in apartment
7 complex. We look for specific, specific place within a
8 walkable distance to the Metro but we wanted to live in
9 single-family house and have, and have a backyard and we, we
10 had master plan under consideration for when we bought
11 because this is a lifetime, it was lifetime change for us.
12 It was big decision to take and that was nothing close to
13 what we anticipate, and now we have to fight and now I hear
14 words that master plan actually really, people are trying to
15 undermine master plan, something that we used as a, as a
16 base for purchasing our house.

17 And I feel, I feel coming here, I feel weird being
18 here trying to defend something that I think was clear,
19 clear and, by the master plan, that it's going to be R-60
20 single-family homes and things so I -- and another thing is
21 like I would, I would please ask you if you can, if you can
22 consider people who are living and that are directly,
23 directly under the, they're going to be directly under the
24 influence of this development, not, let's not talk, let's
25 not think about people who eventually are going to live

1 there after 10 years. We are right here right now and we
2 try to, to now defend our homes. That's, I guess that's all
3 I have to say.

4 MS. ROBESON: Okay. Thank you. Mr. Harris?

5 MR. HARRIS: Yes.

6 CROSS-EXAMINATION

7 BY MR. HARRIS:

8 Q I'm sorry. I didn't, my hearing isn't the
9 greatest. Your name again?

10 A My name?

11 Q Yes. I'm sorry.

12 A First name I-V-A-Y-L-O.

13 Q A-I, I-V.

14 A A-Y-L-O.

15 Q L-O. Okay.

16 A And last name G-A-C-H-E-V.

17 Q G-A-C-H-E?

18 A V. Gachev.

19 Q Gachev, okay. Sorry about that.

20 MS. ROBESON: Did the court reporter get that?

21 THE WITNESS: I'm sorry.

22 MR. HARRIS: Yes. Okay.

23 THE WITNESS: Ivaylo Gachev.

24 BY MR. HARRIS:

25 Q Mr. Gachev, you've lived here just three years now

1 I think in Silver Spring.

2 A Yes.

3 Q Where was the apartment complex before that?

4 A That was in Arlington, Virginia.

5 Q Okay. You came to Silver Spring though because of

6 its vibrancy and its activity there I assume?

7 A Yes.

8 Q Do you like the new Silver Spring?

9 A The --

10 Q Downtown Silver Spring.

11 A I don't know what's new and what's old.

12 Q Well, exactly. Do you like downtown Silver

13 Spring?

14 A Yes.

15 Q Yes. Do you realize a lot of people didn't want

16 it to be built like that?

17 A Maybe. I don't know.

18 Q But you like it now anyway?

19 A Yes.

20 Q You --

21 A There are things that can be improved definitely.

22 Q That goes without saying with anyone.

23 A Okay.

24 Q You say you use the Metro?

25 A No. I'm driving. I'm working in Manassas,

1 Virginia.

2 Q You said you walked to the Metro. That's what you
3 said.

4 A No. I never referred that I'm walking to a Metro.
5 Maybe in my slide.

6 Q We can ask the court reporter to play it back.

7 A No, no, no. If I said something, I guess it's
8 because I walk to the Metro to take these pictures.

9 Q Oh, okay.

10 A It wasn't like where I work or --

11 Q Okay. You work in Arlington you said?

12 A No. In Manassas, Virginia.

13 Q In Manassas, yes. That requires a car. So why
14 did you want to live close to the CBD?

15 A It was near to, nearby the Metro and actually,
16 that was the only, let's say only house that was in, let's
17 say proximity to what we need.

18 Q You wanted to be near the Metro?

19 A Yes.

20 Q And is that, do you see that as a valuable
21 commodity to have?

22 A Everything is valuable commodity.

23 Q It's nice to be near Metro?

24 A Yes.

25 Q Do you believe other people want to live near

1 Metro as well?

2 A Probably.

3 Q And do you support their rights to buy homes near
4 Metro as well as you did?

5 A Sure. There are, I'm pretty sure there are houses
6 around Metro that are for sale.

7 Q Are you opposed to any new development of houses
8 near Metro?

9 A No.

10 Q You said you studied the master plan very
11 carefully when you bought.

12 A Oh, no. I didn't say that.

13 Q Oh.

14 A No, I didn't.

15 Q Did you study the master plan at all?

16 A No.

17 Q So do you --

18 A I didn't study it.

19 Q -- know anything about the master plan?

20 A I wouldn't say that I don't know anything. I
21 didn't study it.

22 Q Have you studied it now?

23 A No. I mean, if you, if you -- I guess I don't
24 know what you're trying to ask me.

25 Q Have you studied the master plan?

1 A No.

2 Q There are townhouses elsewhere in the Silver
3 Spring area, aren't there?

4 A Probably.

5 Q Are you aware of any others?

6 A Along Georgia Avenue and pretty much from what I,
7 from what I saw on your, on your board, what Mr. Iraola
8 showed before that.

9 Q Okay. Let's take the ones --

10 A I cannot recall.

11 Q -- the ones on Georgia Avenue.

12 A Um-hum.

13 Q You mean on the west side of Georgia Avenue?

14 A I believe I don't, I don't remember exactly where.

15 Q Okay. Do you know the neighborhood in which
16 they're located?

17 A By the name? How do --

18 Q Woodside Park? Do you know that neighborhood?

19 A Briefly, yeah.

20 Q Is that a nice neighborhood?

21 A All the neighborhoods in Silver Spring are nice
22 neighborhoods.

23 Q So that would go for Woodside as well, that
24 neighborhood between Colesville Road and Georgia Avenue,
25 kind of across from your neighborhood. North of Spring

1 Street.

2 A Okay.

3 Q Do you know that neighborhood?

4 A Once again?

5 Q North of Spring Street, west of Colesville Road,
6 between Colesville and Georgia Avenue.

7 A And that would be --

8 Q If this is Colesville Road here --

9 A Um-hum. Um-hum.

10 Q -- okay, it would be up in here.

11 A Okay.

12 Q Across Colesville Road from you.

13 A I'm not, I don't think I'm familiar with that
14 neighborhood.

15 Q Do you know where the Park and Planning Commission
16 headquarters are?

17 A Somewhere in the area there I think.

18 Q You don't know that either.

19 A I'm not, I'm not sure.

20 Q Would you agree that the neighborhoods where
21 there's townhouses are located that you mentioned, that they
22 have remained nice neighborhoods even with the townhomes
23 being built there?

24 A I cannot speak about this. Maybe visually, I
25 don't know.

1 Q But they're nice neighborhoods.

2 A I cannot say that.

3 Q You just did say that.

4 MS. ROBESON: Well, he just said he didn't know.

5 MR. HARRIS: Well, he said all the neighborhoods
6 in Silver Spring are nice. That's what he said one minute
7 ago.

8 THE WITNESS: Well, yeah, but --

9 BY MR. HARRIS:

10 Q Now you want to change that?

11 A No.

12 Q Well, are they nice or not?

13 A All the neighborhoods, I'm staying behind my
14 saying, all the neighborhoods in Silver Spring are nice.

15 Q Okay. Thank you. Are you okay with the Chelsea
16 School there?

17 A I'm pretty happy with it.

18 Q Would you be happy if it more than doubled in
19 size?

20 A More than doubled in size? Can you explain me a
21 little bit more? What do you mean by double in size? We
22 can say --

23 Q There are 83 students there now I believe.

24 A Um-hum.

25 Q If it were to go to 200 students, are you okay

1 with that?

2 A Yeah.

3 Q That wouldn't change the character of the
4 neighborhood?

5 A I, I don't know.

6 Q So it wouldn't bother you then?

7 A Well, we're talking about different things.
8 School is different with, with the, it is.

9 Q Would it bother you or not?

10 A It depends on many things. I cannot answer you
11 right now.

12 Q Okay.

13 A It depends on many, many, many things.

14 Q Would 39 houses being built there instead of the
15 school be okay with you?

16 A What kind of houses?

17 Q Townhouses.

18 A And again, I cannot answer you because I don't see
19 anything in front of me.

20 MR. HARRIS: Well, I don't, I didn't get a copy of
21 that exhibit that you had, Norman, I mean Dave. No, no.
22 The --

23 MS. ROBESON: I have yours.

24 MR. HARRIS: Well, that's my ugly one. Okay.

25 MR. BROWN: What are you looking for?

1 MR. HARRIS: Your hand sketch that was better than
2 my hand sketch.

3 MS. ROBESON: Well, I have that too.

4 MR. HARRIS: Okay. Thank you.

5 BY MR. HARRIS:

6 Q This Exhibit 152, a plan like that with townhouses
7 on the Chelsea site, would you be okay with that?

8 A I'm seeing only one plan. I cannot say.

9 Q You can't say whether this would be okay?

10 A No, no. I don't like this but there are many
11 other options.

12 Q Okay.

13 MR. HARRIS: May I borrow that one?

14 MR. BROWN: 149.

15 MR. HARRIS: Oh.

16 MR. BROWN: Hang on.

17 MR. HARRIS: That's a different one. I don't know
18 why I didn't get it. I'll have to get that later. Is that
19 it? Yes.

20 BY MR. HARRIS:

21 Q This is Exhibit 149. Are you okay with that plan?

22 A What are the picks actually?

23 Q Pardon?

24 A This -- okay.

25 Q Springvale, Pershing, Ellsworth Drive. These are

1 townhouse units.

2 A No.

3 Q No. You don't like that either? What kind of a
4 townhouse plan would you support there?

5 A I'll tell you when I see it. I can't tell you.

6 Q You're aware that the Riggs house, the historic
7 house that you talked about, is going to be preserved?

8 A Yes.

9 Q And so the pictures that you showed of the front
10 lawn of that, that would remain. Are you aware of that?

11 A Is it going to be the whole lawn or part of it
12 because the whole lawn is a lot?

13 Q Not the whole lawn that's the front of it.

14 MR. HARRIS: Do you have that exhibit there?

15 THE WITNESS: In front of it, it's pretty small.
16 Pretty small I have to say. On the side though, okay.

17 BY MR. HARRIS:

18 Q The picture you took is --

19 MS. ROBESON: And that's Exhibit 30A.

20 BY MR. HARRIS:

21 Q This is Exhibit 30A. You took a picture from the
22 corner, call it the southeast corner there --

23 A I have --

24 Q -- looking to the house and you were saying how
25 magnificent that was.

1 A I have problem with this picture.

2 Q Okay. Well, we'll go to your picture.

3 A If I have one. Let me see. I have problem with

4 this picture for a reason.

5 Q No. Not this picture.

6 A Yeah, yeah.

7 Q This is --

8 A I know. I know.

9 Q Well --

10 MS. ROBESON: Just --

11 BY MR. HARRIS:

12 Q I'm asking you the question. Let me ask you the

13 question about the picture that I -- this is a view from

14 Pershing, this is --

15 A This is exact picture that I need and I'm going to

16 show --

17 Q Okay, fine.

18 A I'm going to show it right now. This is totally

19 different from actual pictures. I want to show you how, I'm

20 sorry --

21 MS. ROBESON: Thank you.

22 THE WITNESS: I have to find my -- okay.

23 BY MR. HARRIS:

24 Q Well, let me keep this thing moving so that we

25 don't have to delay.

1 A Well, there's a, there's actual problem over there
2 that I see. It's not actual, it's not quite right from what
3 I see because the driveway actually goes beyond.

4 Q That's correct.

5 A Okay.

6 Q So that picture is showing that that driveway is
7 going to be removed.

8 A Okay.

9 Q So turn it into grass.

10 A Um-hum.

11 Q So that would be a better condition for the front
12 of that house than exists today, wouldn't it?

13 A That would be nice but you, but you take a lot of
14 green space from the other part.

15 Q The --

16 A (Indiscernible.)

17 Q You're aware that for the expansion of the Chelsea
18 School, a number of the trees on the property were going to
19 be removed?

20 A Number or all of it?

21 Q Many of them.

22 A I'm not aware.

23 Q You're not aware.

24 A Uhn-uh.

25 Q Are you okay if they removed the trees for their

1 school expansion?

2 A No. I'm not okay with that.

3 Q Okay. Are you aware that the single-family or the
4 plan that we showed you a minute ago, Exhibit --

5 MS. ROBESON: 149.

6 BY MR. HARRIS:

7 Q -- 149 also would take out a number of those
8 trees. Is that your concern as well?

9 A The difference is is single-family house, you're
10 allowed to plant the trees. I personally plant a few trees
11 on my property so these are different, different things.
12 They might put one or two trees but as a single-family house
13 owner, they can plant maybe two times more trees than they
14 tear down which is not the case with townhouses. You cannot
15 plant trees in your, in your backyard.

16 Q You can't plant trees in that open space that's
17 there, two-and-a-half acres?

18 A So the --

19 Q On Exhibit 30.

20 A So the owner is going to go outside and plant a
21 tree? That's what you said?

22 Q No. Can you plant trees there in that open space?

23 A Where?

24 Q The green space that is colored green.

25 A Can I plant a tree there?

1 Q Can the owner plant trees there?

2 A Owner of the single-family house, single, I mean
3 owner of the townhouse single unit or --

4 Q Can anyone plant trees there? Let's start with
5 that.

6 A I don't know. Maybe.

7 Q Okay. Okay. Would you say that the Cameron Hill
8 site is similarly situated to this site?

9 A Probably not but I explained why I took these
10 pictures.

11 Q Isn't the Cameron Hill site in the center of the
12 CBD?

13 A Yes.

14 Q Very different than this site.

15 A Yes.

16 Q And --

17 A Surrounding area is totally different.

18 Q Exactly. And so you would expect a more urban
19 form of development in a setting like that.

20 A Where?

21 Q Cameron Hill.

22 A Not necessarily.

23 Q You would expect big lawns in the middle of the
24 CBD?

25 A Not big lawns. I didn't say that.

1 Q Would you expect lawns?

2 A At least some green space.

3 Q There is green space there. Would you expect
4 lawns?

5 A No.

6 Q No. So those townhouses front directly on the
7 sidewalk, on the street in an urban condition. That's
8 fairly typical for an urban setting, isn't it?

9 A Probably.

10 Q And this isn't that configuration. These units
11 aren't fronting on the street, are they?

12 A Why they are so dense?

13 Q Are they fronting on the street?

14 A Yes.

15 Q You don't agree that this is a very different plan
16 than Cameron Hill?

17 A I don't disagree or agree. I don't --

18 Q Does it look like the Cameron Hill plan?

19 A No.

20 Q So then it's different.

21 A Yes.

22 Q Were you at the open house that EYA sponsored for
23 neighbors?

24 A No. And I never heard about it. That was my
25 fault somehow? I never heard about it.

1 Q So if we can prove that we sent a notice to your
2 address, you would deny getting it?

3 MS. ROBESON: Mr. Harris.

4 MR. HARRIS: Well, we sent notices to the entire
5 neighborhood.

6 MS. ROBESON: I know, but I guess I'm getting to
7 what is the --

8 THE WITNESS: Well, you might send it but I didn't
9 get it.

10 BY MR. HARRIS:

11 Q Okay.

12 A This is what was my statement, statement is. I
13 wasn't aware of this meeting.

14 Q When did you become aware of the project?

15 A It was -- I can't recall exactly the date. It was
16 one of the SOECA meetings where I heard. Was it during the
17 winter? That's all I can tell you.

18 Q And did you ever contact EYA for any additional
19 information?

20 A No. But why they don't contacted us?

21 Q Did you ever go to their website?

22 A No. Actually, recently, I did for my --

23 Q Until then, you didn't.

24 A No, I didn't.

25 Q Do you have steps going into your house?

- 1 A Once again?
- 2 Q Do you have steps going into your house?
- 3 A A few.
- 4 Q Is your house handicapped accessible?
- 5 A No.
- 6 Q How many of the houses in SOECA do you think are
- 7 handicapped accessible?
- 8 A Probably a few.
- 9 Q Not may probably.
- 10 A I can't say.
- 11 Q Any house with a step is not handicapped
- 12 accessible, is that correct?
- 13 A If it's not improved to be handicapped accessible,
- 14 it's not.
- 15 Q Well, a wheelchair can't go up a step, can it?
- 16 A That's what I say. If there's stairs, no, but if
- 17 it's --
- 18 Q Okay.
- 19 A -- improved by the owner, it probably can be
- 20 accessible.
- 21 Q Okay.
- 22 A But there's no curbs here so you can, you can't
- 23 enter the property if you have a wheelchair.
- 24 Q Where's the sidewalk there?
- 25 A There's not sidewalk.

1 Q Is that handicapped accessible?

2 A No. But there's no, there's no traffic in our
3 neighborhood so --

4 Q Okay. Well, that's good to hear. Okay. That's
5 all I have.

6 MS. ROBESON: Okay. Any questions, Mr. Brown?

7 MR. BROWN: No questions.

8 MS. ROBESON: Okay. You can be excused. Thank
9 you.

10 MR. HARRIS: May I keep this?

11 THE WITNESS: Yes.

12 MR. HUMPHREY: Hi.

13 MS. ROBESON: Good afternoon. Please state your
14 name and address for the record.

15 MR. HUMPHREY: My name is Jim Humphrey. I live at
16 5104 Elm Street in Bethesda, Maryland.

17 MS. ROBESON: Okay. Please raise your right hand.

18 (Witness sworn.)

19 DIRECT EXAMINATION

20 THE WITNESS: I also have copies of my testimony
21 that, for you, Madam Hearing Examiner.

22 MS. ROBESON: Okay. I'm going to mark it as an
23 exhibit. Mr. Harris, do you have any objections to Mr.
24 Humphrey putting in his testimony?

25 THE WITNESS: Simply what I'm going to address

1 this afternoon so that Mr. Harris has something to refer to
2 for questions.

3 MR. HARRIS: Okay.

4 MS. ROBESON: So this is -- go ahead.

5 MR. HARRIS: I'd prefer to wait until he
6 testifies. I mean, mark it as an exhibit but --

7 MS. ROBESON: It will be 159, Humphrey testimony.

8 (Exhibit No. 159 was marked for
9 identification.)

10 MS. ROBESON: Okay. Go ahead, Mr. Humphrey.

11 THE WITNESS: Thank you. I'm Jim Humphrey. I'm a
12 volunteer advisor to individuals and neighborhood
13 associations in Montgomery County on a range of land use
14 matters including master planning and re-zoning issues,
15 development review, tech issues. I'm not a lawyer and I
16 have no formal education in land use planning, but I've
17 learned quite a bit in nine-and-a-half years as a volunteer
18 activist in the field.

19 I urge the Hearing Examiner to recommend that
20 District Council disapprove the application for re-zoning of
21 the Chelsea School site from R-60 to RE-15. This position
22 stems from my view that the 2000 North Silver Spring Master
23 Plan recommends against re-zoning of this R-60 property, and
24 I believe that it is only when Government decisions are
25 consistent with County master and sector plans that these

1 plans have any degree of reliability for perspective
2 purchasers of properties. And we are told there's a real
3 estate disclosure law where perspective purchasers of
4 property are told they have an opportunity to look at master
5 plans. Master plans have to have a degree of predictability
6 and reliability for developers as well, as well as for the
7 residents of our neighborhoods in the County.

8 When the special exception use on a property is no
9 longer desired and is vacated, as is the case with the
10 Chelsea School, then the development standards for the
11 property revert as allowed under the base zone, in this
12 case, R-60. In order to approve a limited map amendment
13 under this optional method of application and apply the RT-
14 15 Zone to the property as requested by the applicant, the
15 Council has to find that the application is in accordance
16 for the requirements of the purpose clause and all other
17 requirements applicable to the requested zone. I've cited
18 the section of County Code from which that is quoted.

19 I strongly disagree with the assertion of the
20 Planning Staff and the Board that the applicant's proposed
21 project satisfies the purpose of the RT-15 Zone. As stated
22 in the Zoning Ordinance, the purpose, quote, "purpose of the
23 RT zone is to provide suitable sites for townhouses, A, in
24 sections of the County that are designated or appropriate
25 for residential development at densities allowed in the RT

1 zones, or B, in locations in the County where there's a need
2 for buffer or transitional uses between commercial,
3 industrial or high-density apartment uses and low-density
4 one-family uses.

5 So I ask some questions based on those criteria.
6 Is the subject site, quote, "designated,@ end quote, for RT
7 zoning in the master plan? No. This fact is indisputable.

8 The 2000 North Silver Spring Master Plan, North and West
9 Silver Spring Master Plan, quote, "reconfirms the existing
10 R-60 Zone for virtually all of North Silver Spring with a
11 few exceptions,@ end quote. Those exceptions include
12 recommendations for townhouse zoning along Georgia Avenue
13 outside of the sector plan area, the special exception
14 commercial use for the R-60 zoned single-family home
15 structures along Cedar Street from Ellsworth to Pershing,
16 and the R-60 cluster zone on the three acre Watts property
17 that I'm sure you heard other people mention in their
18 testimony.

19 The Chelsea School site was not one of those
20 exceptions and whether it was specifically mentioned or not
21 in the master plan, the master plan pointedly reconfirms the
22 R-60 zoning for the subject site and all other R-60 zoned
23 properties in the plan area.

24 Is the subject site appropriate for densities
25 allowed in the RT zone? I would assert no because of the

1 use of the plural densities in this section of the RT
2 purpose clause. The townhouse zones are composed of five
3 different density levels along 6, 8, 10, 12-and-a-half or 15
4 dwelling units per acre. I believe the subject site is
5 appropriate for one of the density levels allowed in the RT
6 zones, the RT-6 Zone, because this is a level of density
7 allowed by the R-60 zoning in the surrounding single-family
8 home neighborhood, six dwelling units per acre, but the
9 applicant can build townhouses on this site under existing
10 R-60 zoning, or at 6.1 dwelling units per acre density, in
11 certain circumstances without re-zoning the site. I don't
12 believe the site is appropriate for the greater densities
13 allowed in the RT zones of 8, 10, 12-and-a-half or 15 DU per
14 acre.

15 The North Silver Spring Master Plan neighborhood
16 that surrounds the subject site contains primarily R-60
17 single-family detached homes with the notable exceptions of
18 the multi-family residential high-rise building on the east
19 side of Colesville at Cedar Street and the Springvale
20 Terrace retirement community on the west side of Wayne
21 Avenue at Springvale Road. These developments existed at
22 the time of the 2000 plan, for years before the 2000 plan,
23 yet the plan still, quote, "reconfirms R-60 zoning for
24 virtually all of North Silver Spring,@ end quote. And using
25 the existence of these developments as justification for re-

1 zoning the subject site requires a leap of imagination not
2 envisioned by the District Council when they approved the
3 North Silver Spring plan in 2000.

4 Because the vast majority of the surrounding
5 neighborhood has a density less than one-half of the level
6 requested by the applicant, we find the density of the
7 request for the RT zone to be inappropriate. Some might
8 believe the site is appropriate for townhouse development at
9 15 DU per acre because of the proximity to the Silver Spring
10 Central Business District and the Metro station. In this
11 case, I assert that close doesn't count. The fact is that
12 this site is not located in the Silver Spring Central
13 Business District or the Silver Spring Metro Station Policy
14 Area.

15 And I've included a definition of MSPAs, the Metro
16 Station Policy Areas, which comes from the Fiscal 2003
17 Annual Growth Policy. It's the handiest definition that I
18 could find in my computer files. And that states that Metro
19 Station Policy Areas are one of the compact policy areas at
20 top Metro stations. Creation of these policy areas enables
21 the County to pursue a goal of encouraging development in
22 areas well-served by existing transit facilities. It goes
23 on to state Metro Station Policy Areas, it lists them,
24 including Silver Spring CBD. The boundaries then of a
25 Silver Spring Metro Station Policy Area are the boundaries

1 of the Silver Spring Central Business District.

2 The CBD and the MSPA are on the other side of the
3 Cedar Street boundary line from this neighborhood and the
4 zoning, in zoning, lines were established on that for a
5 reason. Certain things are allowed or encouraged on one
6 side of a boundary line which are not allowed or encouraged
7 on the other side of that line. While the County may,
8 quote, "pursue a goal of encouraging development in areas
9 well-served by existing transit facilities,@ end quote, i.e.
10 Metro Station Policy Areas, it has no policy that I'm aware
11 of that encourages development within the stable, well-
12 maintained existing residential neighborhoods surrounding
13 transit station areas.

14 Thirdly, from the zone, purposes of the zone, we
15 can ask is the subject site one of the locations in the
16 County where there is a need for a buffer or transitional
17 uses between commercial, industrial or high-density
18 apartment uses and low-density one-family uses? No. As the
19 Planning staff noted in their May 14th packet, quote, "A row
20 of one-family detached houses all with a master plan
21 recommendation for special exception uses is located
22 directly south of the subject property along Cedar Street.@
23 That comes from page 3 of that packet.

24 The 2000 master plan strongly recommends that,
25 quote, "the existing residential structures be retained,@

1 end quote, as well as their R-60 zoning. These Cedar Street
2 house structures then serve as a very effective buffer
3 between the Silver Spring CBD and the Evanswood residential
4 neighborhood. Re-zoning the subject site would be a
5 transition in the wrong direction and would allow greater
6 density of development further into the neighborhood than
7 exists by master plan design already at the edge of the
8 neighborhood.

9 In regards to compatibility, during discussion of
10 this G-892 re-zoning application at the May 19th meeting of
11 the Planning Board, Planning Board Chair Francoise Carrier
12 remarked that to ensure compatibility of the proposed
13 townhouse project with the surrounding single-family
14 detached home neighborhood, the townhouses should be kept to
15 the height limit and the setbacks required in the R-60 Zone.

16 She failed, however, to address a third standard
17 that is applied when one assesses compatibility, that of the
18 mass. It is mass of this, of the proposed structures. Is
19 that mass compatible with single-family home structures that
20 comprise this neighborhood? Well, in my opinion,
21 compatibility in this case is not so much a question of the
22 mass of a single stick of townhouses or a row of townhouses
23 compared to a single-family detached home. Yes. The mass
24 of a stick of townhouses is significantly larger than that
25 of a single-family detached home allowed in R-60 but in this

1 case, I believe compatibility must be assessed from the
2 perspective of the cumulative effect of 12 sticks of
3 townhouses proposed by the applicant for this site.

4 Ideally, to achieve compatibility of townhouses
5 with the surrounding neighborhood in this case, it is first
6 necessary to allow no greater density than it's allowed for
7 detached homes in the R-60 Zone, six dwelling units per
8 acre. In the case of clustering or optional method with
9 MPDUs, it's 6.1 DU per acre. It's also critical to impose
10 greater setbacks than those required in the R-60 Zone and to
11 make greater use of landscaping and other buffers and
12 carefully site townhouse sticks to minimize the visual
13 impact of their mass on nearby neighbors. That, of course,
14 can be done in large part at site plan approval by the
15 Planning Board. In my opinion, this will not be possible at
16 14.67 dwelling units per acre density proposed by the
17 applicant.

18 Changing mistake. The only other legal
19 justification for District Council approval of such a re-
20 zoning request that I'm aware of might be provided by the
21 Maryland State, what's called Changing Mistake Law but
22 there's been no change in the neighborhood surrounding the
23 subject site that was not foreseen in the applicable master
24 plan which would justify application of a new zone and no
25 party has asserted a mistake in the original site zoning as

1 a rationale for their request of re-zoning to RT townhouses.

2 If it is approved by the District Council, this
3 re-zoning would constitute the first change in the North
4 Silver Spring community that was not anticipated in the 2000
5 master plan. It would qualify as the change, in quotes,
6 air quotes, change in the neighborhood that could be used to
7 justify approval of future re-zoning requests of R-60
8 properties to the RT townhouse zone. The danger then for
9 the nearby home owners is that this re-zoning could be the
10 first step down a slippery slope of multiple changes in this
11 master plan that would render the plan unreliable as a
12 blueprint for the future of the area.

13 It is my belief and conclusion that the re-zoning
14 requested by the applicant in Limited Map Amendment G-892 is
15 not justified. The RT-15 Zone is not recommended for the
16 subject site in the applicable master plan, 15 DU per acre
17 is not an appropriate density for the site and the townhouse
18 zoning is not needed in this location to buffer the
19 neighborhood from nearby higher density uses. The re-zoning
20 would, in fact, create a buffer in the wrong direction
21 allowing greater density further and then, into the
22 neighborhood than at the existing buffer of single-family
23 home structures along Cedar Street which have been retained
24 as a result of master plan recommendation.

25 I respectfully then urge Madam Hearing Examiner to

1 support adherence to the 2000 North Silver Spring Master
2 Plan and to help ensure the continued validity of the plan
3 by recommending the District Council disapprove this re-
4 zoning application. Thank you.

5 MS. ROBESON: Thank you, Mr. Humphrey. Mr.
6 Harris?

7 CROSS-EXAMINATION

8 BY MR. HARRIS:

9 Q Thank you, Mr. Humphrey. You say that the master
10 plan recommends against re-zoning of this R-60 property.
11 Where does it say that?

12 A Actually, I quoted that it had reconfirmed the R-
13 60 Zone for virtually all of North Silver Spring with a few
14 exceptions. This property was not noted as an exception.
15 Therefore, the plan recommends or reconfirms R-60 zoning for
16 the property.

17 Q That's different than recommending against a re-
18 zoning, isn't it?

19 A That's a defacto recommendation to not re-zone
20 into any other category but to leave it in R-70 Zone.

21 Q So is it your opinion that if a master plan
22 recommends reconfirming the existing zoning, no zoning
23 application can ever be approved for any such site?

24 A What I am stating in this case is that because
25 this master plan had strong language reconfirming R-60

1 zoning for all the R-60 properties in the Silver Spring
2 plan, that that ought to be what the District Council
3 adheres to.

4 Q I'll ask my question again. Is it your position
5 that if a master plan recommends reconfirming existing
6 zoning, no zoning application can be approved for that, for
7 properties so designated?

8 A If you're asking me if it could be legally
9 approved, of course it could be.

10 Q And they are regularly, aren't they?

11 A I couldn't speak to regularly.

12 Q If I were to give --

13 A I know that floating zones can land on properties.
14 Ordinarily, it's when they're recommended in master plans.

15 Q But it doesn't require a master plan
16 recommendation, does it?

17 A It doesn't require it but it's very unusual when
18 it's not recommended in the master plan.

19 Q Are you familiar with the Good Counsel property in
20 Wheaton?

21 A Yes, I am. Yeah.

22 Q And was that approved without a master plan
23 recommendation?

24 A That required a sector plan amendment to get that
25 one through, yeah.

1 Q It did?

2 A That required a limited sector plan.

3 Q I don't believe so.

4 A Yeah. They applied the CBD zoning to it. It
5 wasn't within the Central Business District so the sector
6 plan had to be amended by the District Council to expand the
7 borders of the CBD.

8 Q Okay. Well, that's your opinion but that, I
9 disagree.

10 A It's not my opinion. It's a fact in the case.

11 Q Well, you're saying that site's zoned CBD?

12 A That's what the applicant had wanted and so that's
13 the reason that they had --

14 Q Is that site zoned CBD?

15 A I can't tell you what it was zoned. I can tell
16 you that the sector plan was amended and the borders of it
17 were enlarged to include the Good Counsel site because the
18 applicant had originally wanted it zoned CBD so that they
19 could build a new Safeway store as a part of their project.

20 Q Okay. You're clearly mistaken. We're not talking
21 about the Safeway store. I said the --

22 A No. We're not talking about Wheaton here either
23 today.

24 Q -- Good Counsel. The Good Counsel property.
25 You're aware of where the Good Counsel property is?

- 1 A Yeah.
- 2 Q Where is it?
- 3 A Yeah. It was -- the old one?
- 4 Q Yes.
- 5 A Along Georgia Avenue.
- 6 Q At what street, do you know?
- 7 A North of Wheaton.
- 8 Q North of Wheaton. Arcola?
- 9 A I couldn't tell you. Yeah, I think it was.
- 10 Q Was that in Arcola? There's no Safeway there, is
- 11 there?
- 12 A No. There isn't going to be because --
- 13 Q There are townhouses there.
- 14 A -- the Safeway decided to stay on their current
- 15 site.
- 16 Q There are townhouses there, aren't there?
- 17 A Yes. The Safeway decided to stay in their current
- 18 site.
- 19 Q And they're zoned RT-15, aren't they?
- 20 A That's correct.
- 21 Q And there is no master plan recommendation calling
- 22 for the RT-15 there, is there?
- 23 A No. It was calling for CBD in the master plan
- 24 amendment that was passed specifically --
- 25 Q Okay.

1 A -- by the District Council for redevelopment of
2 that property before the developer was told by Safeway they
3 didn't want to move there.

4 Q Okay.

5 A They wanted to stay on their current site.

6 Q Okay.

7 A I know the history of the site, Bob.

8 Q Okay. Well, I'll talk to you later about that.

9 Are you aware of other cases where RT zoning has been
10 applied without master plan amendment or without a master
11 plan recommendation?

12 A The only one I can think of would be in East
13 Bethesda.

14 Q And that was approved without a master plan
15 recommendation.

16 A Between Rosedale and West Virginia Avenue.

17 Q I'm sorry?

18 A Yeah. Yes.

19 Q And that was approved without a master plan
20 recommendation.

21 A Yes.

22 Q So a master plan recommendation is not required,
23 and I don't think you're saying that here.

24 A No. No.

25 Q The --

1 A But in my knowledge of re-zonings, which is
2 limited, and I say I'm not a professional, I don't get the
3 big bucks, I'm an unpaid volunteer, it is very unusual for a
4 zone, a floating zone to land on a property if it's not
5 recommended in a master plan. It's unusual.

6 Q In your opinion.

7 A In my opinion, yeah. I told you.

8 Q But you're okay with RT zoning here.

9 A It's -- well, no. What I have, in my opinion,
10 what I advised the neighborhood was that the R-60 zoning,
11 which is the base zone for this property, is the appropriate
12 zoning.

13 Q Don't you recommend the RT-6 Zone here?

14 A No. I said that the density of the RT-6 Zone
15 would be appropriate, six dwelling units per acre.

16 Q Okay. But you wouldn't support RT zoning here.

17 A I don't, I don't support re-zoning into RT, no.
18 No. I think this is a way you kill master plans because as
19 I said, this is the first step down a slipper slope, the
20 first change in the plan that wasn't foreseen in the plan,
21 and that means other re-zonings can come forward under the
22 Change Law.

23 Q Doesn't the North Silver Spring reconfirm the R-60
24 zoning for the Woodside townhouse project that got re-zoned?

25 A No. It actually recommended RT for that I

1 believe.

2 Q Let me turn your attention to page --

3 A And that's the reason that the Woodside Courts
4 project went forward.

5 Q Page 22 of the --

6 A Actually recommended it in several places I
7 thought.

8 Q Page 22 of the North and West Silver Spring Master
9 Plan.

10 MR. HARRIS: Ms. Robeson, did we give this an
11 exhibit number?

12 MS. ROBESON: Yes. It's, let me see, 139.

13 MR. HARRIS: 13 --

14 BY MR. HARRIS:

15 Q Exhibit 139, page 22. Isn't the Woodside
16 townhouse re-zoning that occurred in the last several years
17 shown as R-60 zoning on that map on page 2?

18 A I believe it's shown as RT. I don't know which
19 box you're referring to.

20 Q The RT zoning boxes there, there is no RT zoning
21 box for the property that got re-zoned that was referred to
22 as Woodside Park. I'll try to get that case number for you.

23 A I'm on page 22, but I thought it was recommended
24 for RT-10.

25 Q But it's not really, is it? The proposed zoning

1 is R-60.

2 A I know but then it -- what that plan did was
3 recommend townhouses along Georgia Avenue in the protection
4 of the R-60 neighborhoods back in from it.

5 Q It's proposed R-60 zoning though.

6 A It may be, Bob.

7 Q Okay.

8 A I can't read these squiggles. I think these are
9 the worst-drawn maps I've ever seen and as Councilmember
10 Praisner always said, if you're relying on maps and not
11 language in the plan, you're in trouble.

12 Q And if there's testimony in the record showing
13 that the Katz property, the Good Counsel property and the
14 Oxbridge property all were re-zoned to RT zones without a
15 master plan recommendation, you have nothing to disprove
16 that statement, do you?

17 A I, I don't know any different.

18 Q Okay.

19 A No.

20 Q Did the Montgomery Civic Federation ever meet with
21 EYA or --

22 A I'm not testifying as a representative of the
23 Montgomery Civic Federation but I can tell you that we did
24 not meet with EYA. They didn't ask to meet with us and --

25 Q And you didn't --

1 A -- we ordinarily don't meet with developers on
2 projects. I was asked to meet with the community.

3 Q Okay.

4 A I was called by them and asked to advise and meet
5 with them and which I did I think September 30th of last
6 year.

7 Q So they make a decision typically without
8 consultation with the applicant.

9 A I wouldn't say that. I just said that --

10 Q They don't meet.

11 A The Federation?

12 Q Yes.

13 A No. Unless, unless an applicant specifically
14 requests a meeting with the Federation, we don't, we don't
15 request it. We are called in by communities. Again, I'm
16 not testifying as a representative of the Federation here,
17 just an individual consultant, but when the Federation is
18 called in, they're called in by communities and we ask that
19 the community meet with the applicant and that they get all
20 the facts on the ground so that when they come to us with
21 questions, they are informed and knowledgeable.

22 Q And are you aware that as a matter of right, the
23 property owner could develop townhouses on the site today?

24 A Yes. Under R-60, sure.

25 Q And those homes could be fronting directly onto

1 Springvale Road.

2 A Yep. Thirty-nine, I guess it was 38 plus the
3 existing Riggs Thompson house. Yeah. They could be sited,
4 well, however they, they want unless the Planning Board has
5 a say in the matter.

6 Q And you testified at the Planning Board at the
7 hearing on May 19th I guess it was?

8 A I did.

9 Q Yes. Okay. And they --

10 A I believe the -- there, I was testifying on behalf
11 of the Civic Federation and our testimony is a part of the
12 record.

13 Q Your testimony was effectively the same there as
14 it is here in substance.

15 A Effectively. We did not, at that point, we did
16 not include information about the CBD, you know, the site
17 not being within the CBD or the Metro Station Policy Area.
18 However, if you'll look on page 5 of the Staff packet,
19 you'll see an area which they have shaded in red as the CBD,
20 and it is incorrect. It's an aerial photo and it's an
21 incorrect representation. The CBD is actually much larger
22 than is noted in that staff, referred on the Staff packet.

23 MR. HARRIS: Okay. No further questions.

24 MS. ROBESON: Mr. Brown?

25 REDIRECT EXAMINATION

1 BY MR. BROWN:

2 Q Mr. Humphrey, just one clarification with regard
3 to page 3 of your testimony.

4 A Um-hum.

5 Q You talked about clustering, at the bottom of page
6 3, clustering or optional method with MPDUs at 6.1 dwelling
7 units per acre. That does not take into account the density
8 bonus that you would get from putting in MPDUs, does it?

9 A No. That's correct. I'm, again, I'm not a
10 lawyer. I couldn't tell from reading the MPDU or the
11 optional method with MPDUs section, whether that even
12 allowed density bonus or whether the 6.1 DU per acre was the
13 density bonus. Again, not a lawyer.

14 Q You mentioned something about 38 or 39 units.

15 A Because that was mentioned earlier and it hasn't
16 been disputed but, you know, as I said, if I had been called
17 in to advise, when I read that section, the 6.1 is the
18 density bonus.

19 Q All right. So if I --

20 A Well, if the MPDU or Chapter 22 were the last.

21 Q If I were to tell you that the way that statute is
22 interpreted, that this particular acreage, 5.25 acre gross
23 tract area could produce a project with 39 units, including
24 density bonus, would that, would you find that objectionable
25 under your standards as described here?

1 A No.

2 MR. BROWN: Nothing further.

3 MS. ROBESON: All right. Thank you, Mr. Humphrey.

4 Someone come up.

5 MR. JAY: I will come forth. Can I ask for a two

6 minute break or even one minute?

7 MS. ROBESON: Okay. Five minutes. How's that?

8 Just to make sure.

9 MR. JAY: I concede.

10 MR. HARRIS: How many others do we have that can't

11 be here on the 30th?

12 MS. SPIELBERG: I think I have one more person.

13 MR. HARRIS: One more beyond --

14 MS. SPIELBERG: Yes.

15 MR. HARRIS: -- this gentleman?

16 MS. SPIELBERG: I think that's it.

17 MR. HARRIS: Okay.

18 MS. ROBESON: Do you have anyone else, Mr. Harris?

19 MR. HARRIS: That has to testify today, no.

20 MS. ROBESON: Yes. Okay.

21 MR. HARRIS: We'll forego the privilege until next

22 time.

23 MS. ROBESON: Okay. Five minutes and we'll be

24 back on the record.

25 (Whereupon, at 5:11 p.m., a brief recess was

1 taken.)

2 MR. JAY: Madam Hearing Examiner, my name is --

3 MS. ROBESON: Well, go ahead.

4 MR. JAY: I'll wait.

5 MS. ROBESON: State your name and address for the
6 record.

7 MR. JAY: Okay.

8 MS. ROBESON: Yes.

9 MR. JAY: Jonathan Jay. 606 Woodside Parkway,
10 Silver Spring.

11 MS. ROBESON: And please raise your right hand.

12 (Witness sworn.)

13 MS. ROBESON: Okay. Go ahead.

14 DIRECT EXAMINATION

15 THE WITNESS: Madam Hearing Examiner, I resided
16 in, at my address for 19 years. I live only four blocks
17 from the Chelsea School. I speak in opposition to the
18 application. In my testimony, I am going to address the
19 demarcation between the Silver Spring Central Business
20 District and the residential neighborhoods bordering it, the
21 clear policy of the County to place higher density housing
22 in the CBD, not the residential neighborhoods, and the fact
23 that thousands of housing units have indeed been built in
24 the CBD in the last decade or are being planned in
25 furtherance of the policy. I will also speak to the Silver

1 Spring CBD Sector Plan which cannot be any clearer about
2 building considerably more higher density housing of all
3 sorts, including townhouses, inside the CBD.

4 I am concerned that the applicant and their
5 witnesses, in speaking of smart growth transit oriented
6 development and walkable communities, have blurred the
7 distinction between intense development in the Silver Spring
8 Central Business District and single-family detached housing
9 in the residential neighborhoods bordering the CBD, and they
10 have talked as if anything considered not just in but near
11 the CBD is fair ground for denser development. The
12 implication that keeps being floated is that in order to
13 avoid building in rural areas and to accomplish the goals of
14 the County, it is necessary to have higher density in all
15 urban and semi-urban areas of a down-County, including what
16 are otherwise R-60 and R-90 zoned residential neighborhoods.

17 I do not believe this to be accurate and it
18 overlooks the policy of hyper-development in CBDs such as
19 the Silver Spring CBD. The fact is that there is a clear
20 distinction between the Silver Spring CBD, and that
21 distinction must count for something. I hope to focus
22 appropriate attention on the distinction.

23 The terms of smart growth and transit oriented
24 development are being thrown around easily but the County's
25 policy, both on paper and in practice, has clearly been to

1 apply smart growth, in fact intense and furious smart
2 growth, to the Silver Spring CBD, not to the residential
3 neighborhoods. During the late 1990s when blueprints were
4 redeveloped, Silver Spring CBD were being creative, I served
5 as an officer of the Seven Oaks Evanswood Citizens
6 Association and as a delegate to the new President's Council
7 of Silver Spring Civic Associations, otherwise known as
8 Prezco.

9 In recent years, I was in these positions again.
10 Throughout that time, I attended meetings and read countless
11 communications as to the redevelopment in Silver Spring. I
12 can tell you quite clearly that the understanding has always
13 been very clear that there would be a plethora of higher
14 density housing in the CBD but that the residential
15 neighborhoods would be protected. This was explicit and
16 implicit.

17 An important reason for these reassurances is that
18 the residential neighborhoods were being asked to support
19 geometric, if not exponential, growth in the CBD with all
20 the problems for the residential neighborhoods that that
21 might create, despite the benefits, and these owed single-
22 family detached home neighborhoods needed the commitment
23 that they would be protected from actual incursions of
24 higher density within the neighborhoods.

25 One can argue all one wants that the master plan

1 and other documents do not absolutely, unequivocally and
2 undoubtedly without room for question prohibit re-zoning in
3 a residential neighborhood increasing the density above R-
4 60, but that overlooks the fact that there is a long history
5 and that higher density housing in the residential
6 neighborhoods was never the understanding over the last
7 dozen years of redevelopment in the CBD.

8 Here is one example, and an early one, of this
9 clear policy difference of seemingly unlimited growth in the
10 CBD and the protection of the single-family home
11 neighborhoods. In late 1997 or early 1998, representatives
12 of then Chief Executive Douglass Duncan and the developers
13 of what became the branded development downtown Silver
14 Spring convened a community meeting at St. Michael's Church
15 to announce the plan for the cornerstone project of the
16 redevelopment of Silver Spring. I attended that meeting.

17 Redevelopment of the downtown had been a
18 controversial topic in the years preceding the announcement
19 and citizens in residential neighborhoods bordering the CBD
20 had expressed their concerns about over-development in those
21 earlier projects quite vehemently. At the meeting, the
22 officials and developers went out of their way to address
23 those sensibilities and to distinguish this project from
24 earlier ones. The residential neighborhoods would be
25 protected.

1 In fact, they went out of their way to point out
2 that on the CBD side of Cedar Street, the CBD side of Cedar
3 Street behind what was to become the new civic building,
4 there would be higher density housing of some sort and they
5 described that housing as a buffer or transition to their
6 residential neighborhood on the other side of Cedar, Cedar.
7 That residential neighborhood is the one in question at
8 today's hearing and that housing will soon and finally break
9 ground with 222 housing units planned on Cedar Street
10 squarely within the CBD.

11 One recent example of this repeated commitment to
12 the residential neighborhoods occurred just last year when
13 the County Council approved the functional master plan for
14 the purple line on July 27th, 2010. That plan, on page 31,
15 says quite clearly that there might be a purple line station
16 in the future at Wayne Avenue and Dale Drive in the midst of
17 the residential neighborhood and less than a mile from the
18 CBD, less than half a mile from the CBD but that, and I
19 quote in full, "there is no intent or desire to change the
20 zoning in the single-family residential neighborhoods in and
21 around the Dale Drive/Wayne Avenue intersection if a station
22 is established at this location in the future.@"

23 I will read that sentence again. "There is no
24 intent or desire to change the zoning in the single-family
25 residential neighborhoods in and around the Dale Drive/Wayne

1 Avenue intersection if a station is established at this
2 location in the future.@ Again, the commitment of the
3 County has been made to the residential neighborhoods that
4 denser development will not occur in the residential
5 neighborhoods despite fears that it might in the name of
6 smart growth or transit oriented development.

7 I also think it's important to point out that the
8 residential neighborhood on the southwest corner, the
9 intersection of Dale Drive and Wayne Avenue, includes the
10 Chelsea School site. Only a little more than one quarter
11 mile, one-fourth mile straight line distance from that
12 intersection.

13 In various ways, this redevelopment has continued
14 in the Silver Spring CBD. These type of commitments have
15 been repeated. Residential neighborhoods bordering the CBD
16 have continuously heard and read what they believe were
17 commitments from the County that redevelopment would stop at
18 the CBD's borders, not cross them. Accordingly, there has
19 been steady support for the County's policy from the
20 neighborhoods of concentrating housing in addition to
21 commercial and retail development inside the CBD. This
22 includes an accelerated encouragement, planning and
23 construction of housing in the CBD.

24 I think it is also important that some attention
25 also be given to the Silver Spring CBD Sector Plan. The

1 County Council approved this in February 2000. On page 5 of
2 the plan in the introduction section, it was expressly noted
3 that the CBD Sector Plan was being developed concurrently
4 with the master plans for the surrounding neighborhoods. In
5 fact, only a few months later, the master plan for North and
6 West Silver Spring was approved.

7 The Silver Spring CBD Sector Plan is as clear a
8 statement as one could hope to find for the County's
9 blueprint for the CBD and as clear an insertion and
10 description of the fact that the Silver Spring CBD would be
11 a center for implementation of the County's emerging policy
12 to promote smart growth and transit oriented development.
13 There's no way to read this document except as confirming
14 that there would not only be commercial and retail
15 development in the CBD but that housing, including
16 townhouses, in the CBD would be pursued with a vengeance.
17 This is the case throughout the sector plan. Housing,
18 housing and more housing inside the CBD. Implicit in this
19 is the notion that there would be no need to pursue higher
20 density in the residential neighborhoods.

21 Take a look at this section, and I'll submit
22 something in evidence at the end of my testimony. Take a
23 look at this section, the vision, it's entitled, "The
24 Vision, Silver Spring's Future@. On the second page of that
25 section, which is page 14 of the plan, it is stated, other

1 areas of the CBD, primarily at its northern and southern
2 ends, will continue to mark the entrance to the CBD and
3 buffer, and buffer surrounding residential neighborhoods.
4 Some development projects offer, and continues, some
5 development projects offer the potential to strengthen and
6 further define those edges.

7 Then look at page 7 of that section, which is page
8 19 of the plan, where in introducing the residential
9 component of the vision for the CBD, it is stated, this plan
10 seeks to create a mix of housing choices, including low-rise
11 high-density apartments and townhouses. Later on that page,
12 the plan discusses townhouses in the CBD under the term
13 urban row housing.

14 Now, please take a look at the housing section of
15 the plan. On page 1 of that section, which is page 111 of
16 the plan, it begins with the statement that this plan seeks
17 to enhance the established residential downtown community
18 and create new housing options in townhouses and low-rise
19 high-density apartments. In the next paragraph, it repeats
20 what is said several other places in the plan as to the
21 plan's view of the housing component of smart growth as
22 applied to Silver Spring as well as its view that more
23 concentrated housing should be placed specifically in the
24 CBD.

25 It says CBD housing also supports the State's

1 Smart Growth Initiative by rebuilding and enhancing an
2 already established community. At the bottom of this page,
3 and I think we're still on 111, the bottom of this page is
4 the statement townhouses and low-rise high-density
5 apartments are specifically encouraged, and it goes on. I
6 don't think it is easy to misread what the Silver Spring CBD
7 Sector Plan is saying about building denser housing,
8 including townhouses, in the CBD.

9 The County has followed through on its commitment
10 to building significantly more housing in the CBD. This
11 includes the Cameron Hill townhouses, which EYA has built
12 one block from the Silver Spring Metro station, and it
13 includes between 5,000 and 6,000 housing units which have
14 either been built in the last few years or presently in
15 various planning and pre-planning stages involving Planning
16 Department staff. These are, these are located in every
17 section and in every corner of the CBD.

18 I will briefly list the projects and the number of
19 housing units in each. In doing so, I want to make clear
20 that this is not some insignificant policy with respect to
21 concentrating housing in the CBD. I also wish to dispel the
22 notion that it is somehow necessary to have greater, to have
23 density greater than R-60 on the Chelsea property in order
24 to satisfy the County's commitment to smart growth in the
25 CBD.

1 Based on figures available from the Montgomery
2 County Planning Department, as well as what has been
3 reported subsequently in the media and at community
4 meetings, these recently built housing developments, as well
5 as properties in various planning stages, including the
6 following: 1050 Ripley Street, 318 housing units; 1200
7 Blair Mill Road, 96 housing units; 1200 East-West Highway,
8 247; 814 Thayer Avenue, 52; 8021 Georgia Avenue, 210; 8045
9 Newell Street, 120; 8700 Georgia Avenue, 106; 8711 Georgia
10 Avenue, Blair Towns, 78; Bonifant Plaza, 72; Cameron Hills,
11 57; Cameron House, 325; Falkland Chase, 1,250; Midtown
12 Silver Spring on Ripley Street, 317; The Moda Vista
13 Residences at the Silver Spring Hotel, 94; Silver Spring
14 Transit Center Air Rights Development, 453; Studio Plaza,
15 255; The Adele, 96; The Aurora, formerly the Williams and
16 Willste Buildings, 135; The Galaxy, 241; The Portico, 158;
17 the housing units on the CBD side of Cedar Street behind the
18 civic building, 222; the First Baptist Church redevelopment,
19 230; the housing units in the mixed-use development next to
20 the new Silver Spring Library, 120; and the site of the
21 current Silver Spring Post Office, which is on 2nd Avenue at
22 Spring Street in the CBD, directly across 2nd Avenue from
23 the Woodside residential neighborhood and where up to 300
24 housing units are being planned. That's a total of 5,552,
25 and the number is certain to go up further in the next few

1 years.

2 Moreover, it should be added that long before this
3 new intense growth occurred in the CBD, the downtown Silver
4 Spring area and, downtown Silver Spring and the area with
5 only a few miles of it was already the densest area within
6 Montgomery County. There's no need to place 76 townhouses
7 in this residential neighborhood or in the interior of any
8 residential neighborhood bordering the Silver Spring CBD,
9 and we are talking the interior. The County continues to
10 carry out its policy of deliberate and intense housing
11 growth within the CBD. Placing townhouses within a
12 residential neighborhood moves the goal posts. In this
13 case, the CBD and its higher density housing into the
14 neighborhood.

15 More than that, such a decision would violate the
16 longstanding commitment, explicit and implicit, that such
17 intense growth housing, in addition to commercial and
18 retail, is to be limited to the CBD and single-family
19 detached home neighborhoods bordering the CBD and living
20 with that intense growth in the CBD are to be protected.
21 Thank you for your time and consideration of this testimony.

22 And I am submitting the pages of the purple line
23 functional master plan and the Silver Spring CBD Sector Plan
24 that I mentioned in the full context of their sections or
25 subsections. I do not have the entire plans, but I request

1 that they be marked as two separate exhibits and entered
2 into the hearing record if acceptable.

3 MS. ROBESON: Any objection? Any objections? Is
4 it possible to get a full copy of that plan into the record?

5 MS. SPIELBERG: I'm sorry. Which one?

6 MS. ROBESON: The purple, the functional master
7 plan for the purple line.

8 MS. SPIELBERG: We probably can download it from
9 the website and put it on a CD. I mean, it's -- would that,
10 would that --

11 MS. ROBESON: Yes. That will -- well, all right.

12 MS. SPIELBERG: I don't --

13 MS. ROBESON: I'll take -- or can anyone -- okay.
14 Well, I'll take his for the time being, the excerpt.

15 MR. HARRIS: Ms. Robeson, does that mean you're
16 going to get a full copy and put it in?

17 MS. ROBESON: Yes. It does.

18 MR. HARRIS: Okay. And are they providing that
19 or --

20 MS. ROBESON: Well, are you able to provide it
21 or --

22 MS. SPIELBERG: Sorry?

23 MR. BROWN: We'll take care of it one way or the
24 other.

25 MS. SPIELBERG: We'll figure out a way to get it

1 to you.

2 MS. ROBESON: Thank you. So this will be -- is
3 this part of the, what you handed me, I see -- this, is
4 this --

5 THE WITNESS: There are two, two plans. The one
6 in your right hand is the purple line functional master
7 plan.

8 MS. ROBESON: Okay.

9 THE WITNESS: Okay.

10 MS. ROBESON: So Exhibit 160 is the purple line
11 functional master plan. And then I --

12 THE WITNESS: Okay. In your --

13 MS. ROBESON: This is Silver Spring CBD?

14 THE WITNESS: Silver Spring CBD Sector Plan.

15 MS. SPIELBERG: Would you like a copy, a full copy
16 of both of those?

17 MS. ROBESON: Why not? No. If you can get it,
18 that would be good. So Exhibit 160 is the purple line and
19 Exhibit 161 is the Silver Spring CBD.

20 (Exhibit Nos. 160 and 161 were marked
21 for identification.)

22 MS. ROBESON: Mr. Harris, do you have any
23 questions?

24 MR. HARRIS: Yes. Thank you.

25 CROSS-EXAMINATION

1 BY MR. HARRIS:

2 Q I think you'd agree with me, Mr. Jay, that
3 townhouses serve a different housing purpose than multi-
4 family units?

5 A Probably.

6 Q And --

7 A Just by the nature of being different.

8 Q Yes. More likely to accommodate, you know, fewer
9 singles and more families who are married couples and that
10 sort of thing.

11 A That, I can't, can't tell you. I know a lot of
12 families that buy townhouses, and you've got inner cities
13 all over, you know, the East Coast, Philadelphia to
14 Washington, D.C., people living in row houses. Those are
15 families.

16 Q Yes.

17 A And singles.

18 Q Right. Okay.

19 A Childless couples. Whatever.

20 Q That certainly acknowledged the fact that the
21 Silver Spring CBD Sector Plan calls for considerably more
22 multi-family housing in there. You say that it calls for
23 townhouses. Are you aware of any townhouse project other
24 than Cameron Hill that's been built in the CBD since that
25 plan?

1 A Cameron. There's another one that I referred to.

2 I'm not sure if it's been, been built or what has happened

3 with it but I think they were intended to be townhouses.

4 8711 Georgia Avenue, Blair Towns within the CBD. Actually,

5 it may be across the, you know, street or near the Planning

6 Board but it's Blair Towns, 78.

7 Q Okay.

8 A The number I threw out, but I think those are

9 supposed to be townhouses.

10 Q And the Cameron --

11 A And there may be some, something else but I

12 haven't kept up with all that.

13 Q Thank you. The Cameron Hill project was built

14 considerably before that 2000 plan, so that was not being

15 called for in that plan as new development. The plan was

16 from 2000, right?

17 A The plan was from 2000.

18 Q Cameron Hill was there before 2000, wasn't it?

19 A I don't know whether it was just before or just

20 after. It was around within two years of that time, either

21 way, that I know that it was, was built.

22 Q Okay.

23 A But the plan is talking about what it wants to see

24 based on, and includes what's already there.

25 Q So --

1 A There was -- that plan, by the way, was also
2 amending a plan that had last been amended, I forget whether
3 it was '93 or '97, and beginning of '93 was when I think
4 smart growth policy of the State was being promulgated as
5 well as intense discussion about redevelopment of Silver
6 Spring because already, one major redevelopment project had
7 failed in the CBD and they were talking about doing
8 something and they knew communities were concerned about it.

9 Q So you would agree with me that since the sector
10 plan, relatively few, and maybe no new townhouses have been
11 built in the CBD.

12 A I can't say with certainty.

13 Q Well, at most, it would have been EYA with Cameron
14 Hill and the Blair Towns.

15 A I, I can't, I can't tell you.

16 Q Do you know of any other townhouse project?

17 A No. I know that there's another one that's been
18 mentioned here that, in the, in the figures that I gave.

19 Q Other than that though, you know of no townhouse
20 projects that have been built in the CBD.

21 A No. I do know some small, some small condo
22 projects though such as the --

23 Q Those are not townhouses though.

24 A Hum?

25 Q Condos are not townhouses.

1 A Not, not townhouses.

2 Q And you agree that it's a good housing policy to
3 have a mix of housing types?

4 A Where?

5 Q In the County.

6 A I think that the County has a policy that they are
7 going to have that mix of certain types of housing as
8 indicated in the CBD, in the CBD sector plan in the CBD, and
9 I thought there was a master plan that indicated that R-60
10 neighborhoods would more or less be kept as they are near
11 the down, downtown.

12 Q We've been through this before. I'm trying to be
13 polite to you and let you answer your question, but my
14 witnesses were cut off when they were asked yes and no
15 questions and they went on into explaining what they wanted
16 to talk about so I'm going to have to insist on more of a
17 yes or no answer, and I apologize for that but what's fair
18 is fair.

19 So I think you mentioned that --

20 A You're asking me two, I thought you were asking me
21 two, two questions I was trying to distinguish. You were
22 asking a point, an absolute question I thought as to whether
23 it's a good idea to have mixed, mixed housing and --

24 Q I did ask --

25 MS. ROBESON: Why don't we do -- okay.

1 THE WITNESS: Okay.

2 MS. ROBESON: Stop. Can you rephrase your
3 question?

4 MR. HARRIS: I can.

5 BY MR. HARRIS:

6 Q Do you believe it's a good idea to have a mix of
7 housing types in the CBD?

8 A Yes. But that's also the policy.

9 Q That --

10 MS. ROBESON: Okay. It is cross-examination so
11 you can limit --

12 THE WITNESS: Sure.

13 MS. ROBESON: -- your answer to yes, no. You can
14 say I don't know or I don't remember.

15 THE WITNESS: Okay.

16 BY MR. HARRIS:

17 Q Do you believe it's, in general, a good policy to
18 have a mix of housing units throughout a metropolitan area?

19 A I, I can't answer that the way it's phrased.

20 Q Okay. Do you believe it's good to have a mix of
21 housing unit types in the Silver Spring area?

22 A There are.

23 Q Do you believe it's a good policy to have a mix?

24 A There is. It's not a bad policy. It's a good
25 policy.

1 Q Okay. Was it your testimony that the CBD sector
2 plan meant that no re-zonings could occur outside of the CBD
3 sector plan?

4 A No. I did not say that.

5 Q And so re-zonings can proceed outside of the
6 sector plan area if they meet the standards of the Zoning
7 Ordinance.

8 A I'm not, I'm not a zoning lawyer.

9 Q So you know no reason that you couldn't go forward
10 with a re-zoning outside of the sector plan area.

11 A I, I've been a lawyer too so I know that there's
12 different ways that that can be asked and that there's
13 different nuances and stuff, so I'm very uncomfortable with
14 that question. I don't see a yes or no on that.

15 Q Either you do know of a prohibition against it or
16 you don't. Do you know of a prohibition against it?

17 A Do I know of a prohibition?

18 Q Yes.

19 A I, I would have thought that there was a
20 prohibition in the master plan for North and West Silver
21 Spring.

22 Q For --

23 A Against having higher density housing within the
24 R-60 re-zoning which is what you're asking about, about re-
25 zoning, prohibition against re-zoning I thought.

1 Q So are you aware of the purposes of the RT zone,
2 the three alternative purposes?

3 A I've heard reference made to them and I've read
4 them before, but I haven't memorized them.

5 Q And do you agree that there are three alternative
6 approaches, one of which is where it is recommended in a
7 master plan?

8 A Right.

9 Q And the other two do not require a master plan
10 recommendation.

11 A I'm aware of that. I've heard that explained,
12 that it could be either of the three.

13 Q Would you agree that the range of densities in
14 residential in Silver Spring ranges from a low of, I don't
15 know, probably five or six units per acre in some single-
16 family areas to more than 200 per acre in the CBD?

17 A From what to what?

18 Q From five or six units to the acre in the lowest
19 density single-family areas up to 200 units per acre or
20 more --

21 A In the CBD.

22 Q -- in the CBD.

23 A Yes.

24 Q And are you aware that the density of the housing
25 that we're proposing is 14.67 units per acre?

1 A That you're proposing for the residential
2 neighborhood or the CBD?

3 Q For this Chelsea School site.

4 A In the residential neighborhood.

5 Q Well, the Chelsea School site. Are you aware --

6 A Yes. Yes.

7 Q -- that we're seeking 14.67 units.

8 A Yes. I am. I am.

9 Q Okay. And wouldn't you agree that that is by far
10 the lower end of that density range between five or six
11 units and 200 than it is to the higher end of that?

12 A Yes. And it's also lower than in downtown
13 Manhattan for that matter.

14 Q But we're talking about Silver Spring here, not
15 Manhattan so it's --

16 A Well, what is Silver Spring?

17 MS. ROBESON: Mr. Jay, it's not your time to
18 answer question.

19 THE WITNESS: I, I understand. I apologize.

20 BY MR. HARRIS:

21 Q It's on the lower end of the scale of the housing
22 densities in the Silver Spring area.

23 A Silver Spring area, I just want to make clear I
24 understand you, being?

25 Q The CBD about what you discussed and --

1 A Yes.

2 Q -- the North and West Silver Spring Master Plan
3 area.

4 A The answer to your question is yes.

5 Q You're aware of the, familiar with the housing
6 element of the general plan, Exhibit 132?

7 A Of the general plan, no.

8 Q Did you hear us discussing that earlier?

9 A No.

10 Q Let me -- this is Exhibit 132, and take a couple
11 minutes there and look at that, the first few pages. I've
12 highlighted some provisions in there. And I ask you if you
13 wouldn't agree with me that that's calling for additional
14 housing of all types in infill sites.

15 A I, I mean, if you want me to read it and then, and
16 then submit something, I can do it in context, but I --

17 Q Okay.

18 A I don't work, I don't work that way. You're
19 asking me to read a legal document. I assume you refer to
20 this as a legal document. It has the force of law in some
21 respects but without -- and a big document at that. I'd
22 have to see it in context and I think you, that's the way
23 you approach issues as well.

24 Q That's fine.

25 A But I'd be glad --

1 Q You would agree that the --

2 A If you want, if you want me to come back.

3 Q -- document speaks for itself, wouldn't you?

4 A I have no idea. I assume that the County is
5 promulgating documents that speak for themselves.

6 Q Okay. And this --

7 A I don't question that.

8 Q -- would be among those documents that speak for
9 themselves.

10 A Whatever logical conclusion or the assumption that
11 I make that they do promulgate documents that speak for
12 themselves.

13 Q And if this was adopted by the County Council, it
14 would be applicable to County housing policies.

15 A I, I have no idea as I haven't looked at the
16 general plan. I don't know how it relates to the County
17 housing policies. I'm not sure what you mean by housing
18 document, housing policies.

19 Q So it could directly conflict with the CBD sector
20 plan developed 11 or adopted 11 years ago. You have no way
21 of knowing.

22 A That's -- I have no way of knowing.

23 Q Okay. And you do believe that the County has the
24 authority to continue to evolve its land use policies over
25 time? We're not stuck in time?

1 A I, I assume. I assume that the County has that,
2 that authority to change anything that it has according to
3 whatever rules govern such change and given the policy
4 that's to be changed.

5 MR. HARRIS: I have no further questions.

6 MS. ROBESON: Mr. Brown.

7 REDIRECT EXAMINATION

8 BY MR. BROWN:

9 Q Mr. Jay, Mr. Harris asked you about a range of
10 densities from a low of five to six dwelling units per acre
11 to over 220 dwelling units per acre. Do you remember that
12 question?

13 A Yes.

14 Q And he asked you whether or not the density for
15 the Chelsea site at 14 point something was at the lower end
16 of that range. Do you remember that question?

17 A Yes.

18 Q The upper end of that range in that question came
19 from densities achievable where? In what master plan area?

20 A The upper level?

21 Q Yes.

22 A Of the 200 and whatever?

23 Q Yes.

24 A I thought that Mr. Harris' question, he indicated
25 that that was from -- well, I don't know. I thought it was

1 within the CBD. I don't know what master plan talks about
2 -- there's the Silver Spring CBD Sector Plan.

3 Q That's what I'm talking about. Didn't that number
4 come from an area within the Silver Spring CBD?

5 A It's -- yeah. It's --

6 Q As you understood the question.

7 A Yes. And it would seem to make sense because
8 there is some very high density and lower density in the
9 CBD.

10 Q Now, the lower end of that range where he talked
11 about five to six dwelling units per acre, didn't that
12 number come from R-60 density outside the Silver Spring CBD?

13 A I believed it to have come from there.

14 Q So what is your reaction to the premise of that
15 question that you would actually combine those two ranges in
16 the same question in light of your testimony about the
17 importance of the demarcation line?

18 A Could you please ask that one more time?

19 Q What is your reaction to the premise of that
20 question in putting those two ranges, putting those two ends
21 together in the same question in light of your testimony
22 about the importance of the demarcation line between the CBD
23 and the outside areas?

24 A That every density has its place and that there's
25 a policy that the County has as to what those places are and

1 that they're not, it's not, it's not intended. Even if the
2 County has the authority to change the rules, it's not, it's
3 not intended that the goal posts keep moving to allow
4 greater densities in areas which, you know, before then had
5 had lower ones.

6 Q So if I understand your testimony, your, the
7 relevant ranges of densities that should be looked at with
8 respect to appropriate density for this property are the
9 density ranges in the North and West Silver Spring Master
10 Plan exclusively.

11 MR. HARRIS: Objection. That wasn't his
12 testimony.

13 BY MR. BROWN:

14 Q I'm asking whether or not that is the essence of
15 your testimony.

16 MR. HARRIS: It's a very leading question for --

17 MR. BROWN: Well --

18 MS. ROBESON: Well, it's --

19 MR. HARRIS: -- an opposition.

20 MR. BROWN: It's not my witness.

21 MS. ROBESON: It's not hot his --

22 MR. HARRIS: It may not be your witness but it's
23 an opposition witness.

24 MS. ROBESON: Mr. Harris. You can ask the
25 question.

1 THE WITNESS: All right.

2 BY MR. BROWN:

3 Q Do you understand the question?

4 A I did at the time that you asked it so if you
5 could repeat it, we don't have to repeat the objection but,
6 that's been ruled on.

7 Q Mr. Harris asked you a question about whether or
8 not 14 point something dwelling units per acre was at the
9 low end of a range and he gave you, he gave you a range. He
10 gave you numbers at the top and the bottom end of that
11 range, right?

12 A Um-hum.

13 Q My question to you is would you use those same
14 numbers in looking at whether or not 14.7 was high or low in
15 a range or would you use some other range?

16 A Well, I'd look at what was intended by the master
17 plan, what's intended by the zoning for the area, by the
18 zoning in the actual property that's being, that's in
19 question.

20 Q And when you say master plan in the answer to that
21 question, you are talking about which master plan?

22 A For North and West Silver, for North and West
23 Silver Spring. That's where, if that's where the property
24 is located, and it is, then that would be the relevant
25 master plan or sector plan to be looking at to see what

1 would govern that, and then you'd look to the zoning.

2 Q Thank you.

3 MR. BROWN: Nothing further.

4 MR. HARRIS: Just one brief question, and let me
5 find the exhibit here a moment.

6 MS. ROBESON: Is this one question?

7 MR. HARRIS: Yes.

8 MS. ROBESON: Because there is no -- this isn't
9 redirect or -- I'm just asking.

10 MR. HARRIS: I understand what you're saying.

11 MS. ROBESON: Is it one question?

12 MR. HARRIS: Yes.

13 MS. ROBESON: All right.

14 RECROSS-EXAMINATION

15 BY MR. HARRIS:

16 Q Aren't the properties, the Colesville Towers,
17 which is over 200 units per acre, within the North and West
18 Silver Spring Sector Plan area?

19 A I, I don't know for sure but that was built long
20 before, I think, the sector, the 1990, I mean the 2000
21 Silver Spring CBD Sector Plan was promulgated. I'm sorry,
22 and the 2000 master plan for North and West Silver Spring.
23 I don't think there had been any talk when the Planning
24 Board met of demolishing the, those towers and putting in
25 single-family detached houses.

1 Q Fine.

2 MR. HARRIS: Since I'm limited to one question, I
3 will --

4 MS. ROBESON: Well, how many more do you have?

5 MR. HARRIS: No, no. That --

6 MS. ROBESON: Because I've got to cut it off at
7 some point.

8 MR. HARRIS: Enough. Enough.

9 MS. ROBESON: All right. Thank you, Mr. Jay.

10 THE WITNESS: All right. Thank you.

11 MS. SPIELBERG: There's no one else who can't
12 appear on the other two dates as I understand it.

13 MS. ROBESON: Okay. All right. That being said,
14 Mr. Harris, you're okay for today? You --

15 MR. HARRIS: Well, I don't want to be --

16 MS. ROBESON: Well, wait a minute. Let me --
17 before you answer, I'm going to rephrase that. Is there
18 anyone that you have that can't come on the 27th or the
19 30th?

20 MR. HARRIS: No. I think -- one gentleman is
21 expecting his second child, well, he isn't, I guess he's
22 expecting it too, she's having it, but and what is the due
23 date?

24 UNIDENTIFIED SPEAKER: The 23rd.

25 MR. HARRIS: The 23rd. So there's none of us in

1 this room who can answer your specific question.

2 MS. ROBESON: Is he an expert?

3 MR. HARRIS: He is an expert.

4 MS. ROBESON: Okay. I'm going to risk it and hope
5 that she, well, hope that she delivers safely but I don't
6 want to take on an expert right at the moment, so we're
7 going to continue to June 27th at 9:30 and then June 30th at
8 9:30 after that, all right? And we're going to go off the
9 record. Thank you.

10 MR. HARRIS: Thank you.

11 MS. ROBESON: Wait one second. Can I go back on
12 the record and just so I save myself? Okay. Can I just ask
13 for the next hearing, for the next hearing, if you could
14 coordinate your witnesses in advance based on, you know,
15 schedules and who can appear when and maybe we'll know more
16 about your wife. I hope all goes well. Yes?

17 MR. BROWN: While we're still on the record --

18 MS. ROBESON: Yes.

19 MR. BROWN: -- I just want to ask Mr. Harris on
20 the record where we stand vis-a-vis the testimony of the,
21 Cinzia Cirillo.

22 MS. ROBESON: Well, I thought that we were going
23 to adjourn today so he would have a chance to review her CV
24 and her prepared testimony and that you would get back and
25 let me know whether you were able to come to an agreement.

1 MR. BROWN: It would certainly be a help to us if
2 we could get an answer within the next week rather than at
3 the last minute on the 27th.

4 MS. ROBESON: Okay. Do you have a problem with
5 that?

6 MR. HARRIS: Well, I'll say it right out. I took
7 a brief look at lunch of her CV and with due respect, I
8 question her position as an expert in the type of issues
9 that we're talking about here, all due respect to our
10 friend, the statistician's, endorsement, and so I think I
11 probably will object to her as an expert witness. I guess
12 she can testify as a fact witness for them but that wouldn't
13 make her an expert.

14 MS. ROBESON: And why do you think she's not an
15 expert?

16 MR. HARRIS: I see nothing in the CV there that
17 indicates familiarity with the issues that are pertinent to
18 this case.

19 MS. ROBESON: Which are?

20 MR. HARRIS: Which are whether the traffic
21 conditions are suitable for the project, whether it can be
22 accommodated within existing traffic capacity.

23 MS. ROBESON: Well, then I'm not going to make a
24 -- she isn't here to voir dire on her expert testimony. The
25 best I can do is say that she -- we will discuss it when

1 both sides have a chance to, it sounds to me like there is
2 not going to be an agreement. She's going to have to come
3 back and we'll have to make a decision at that point.

4 MR. HARRIS: That's my position. I mean, if it
5 turns out that through voir dire, she does meet the
6 criteria, that's one thing but it's also possible that she
7 would not.

8 MS. ROBESON: I mean, she does have a degree in
9 transportation engineering but if you want to object and
10 challenge her on her expertise, then she'll have to come
11 back and we will discuss it then because she's not here
12 right now to answer the questions. Does that answer your
13 question, Mr. Brown?

14 MR. BROWN: Yes.

15 MS. ROBESON: Okay. So January -- okay. June
16 27th at 9:30 and June 30th at 9:30. And if there's any
17 other witnesses for the 27th that you can agree to in
18 advance, that would be helpful. We can -- you have two more
19 witnesses, correct?

20 MR. HARRIS: We have two expert witnesses, both of
21 whom could be accommodated in a matter of an hour-and-a-half
22 or two hours including cross-examination I'm confident, and
23 I believe that would be the completion of our direct
24 testimony. Technically, Mr. Youngentob, his redirect was
25 not --

1 MS. ROBESON: That's right. I remember.

2 MR. HARRIS: -- followed and so there might be
3 something small there but nonetheless, maximum of two hours
4 of that testimony. We obviously would like some time for
5 rebuttal. We could do that on the 27th or the 30th. I
6 guess I'm curious to know how many witnesses that Mr. Brown
7 or the community might have.

8 MS. ROBESON: Do you have a semi-game plan as far
9 as how many?

10 MS. SPIELBERG: I have a semi-game plan but in
11 terms of the community, I don't have a full because some --

12 MS. ROBESON: Well, give us what you have so far.

13 MS. SPIELBERG: Well, so we have our land use
14 expert who is coming back on the 30th.

15 MS. ROBESON: 30th, right.

16 MS. SPIELBERG: We have the traffic expert, we
17 have the community association president, we have someone
18 coming from Montgomery Preservation, Inc. and then we have
19 the named individual property owners. And then beyond
20 that --

21 MS. ROBESON: Well, I'm sorry. Which named
22 individual? You mean individual property owners?

23 MR. BROWN: No. The ones that I'm representing.

24 MS. SPIELBERG: That Dave is representing, Mr.
25 Brown.

1 MS. ROBESON: Oh, I apologize.

2 MR. BROWN: Michael Gurwitz and --

3 MS. SPIELBERG: Maria Schmit.

4 MR. BROWN: -- Maria Schmit.

5 MS. ROBESON: Okay. So that's two.

6 MS. SPIELBERG: And then, and then -- this is very

7 rough.

8 MS. ROBESON: No. I'm not --

9 MS. SPIELBERG: I mean, there's six --

10 MS. ROBESON: I'm not going to hold you to it. I

11 just --

12 MS. SPIELBERG: I have at least I think about six

13 other people but -- oh, wait, I'm sorry. Six or seven that

14 I, that I know of. There's some people who were here on the

15 6th who understood to come back on the 30th and I don't know

16 that I have contacted all of them.

17 MS. ROBESON: Okay. Can you make an effort to --

18 MS. SPIELBERG: I'll make an effort to try to

19 figure out who will --

20 MS. ROBESON: Because I think we're going to need

21 both --

22 MS. SPIELBERG: -- be coming and control this. I

23 understand.

24 MS. ROBESON: -- both days to make sure we --

25 MS. SPIELBERG: And I'll let them know about the

1 other day as well.

2 MS. ROBESON: Okay. Because I don't want to wait
3 until, I forget what Victoria said, but October or something
4 like that.

5 MS. SPIELBERG: I understand you want to get
6 everyone the 27th or the 30th and I'll, we'll do our best to
7 identify those people.

8 MS. ROBESON: Okay.

9 MR. HARRIS: One thing if I may add, Ms. Robeson.
10 I mis-spoke. I forgot that there are several other
11 community witnesses in support that would need to testify.
12 I think there are four but I think as you've seen, our
13 community witnesses who testify, you know, it's a matter of
14 5 or 10 minutes apiece and so that's very minor but we would
15 want to get that in obviously.

16 MS. ROBESON: All right. Well --

17 MR. HARRIS: So, I mean, we would plan to, on the
18 27th, we would put on, depending on Mr. Kavitz' (phonetic
19 sp.) situation, our expert witnesses. We could have the
20 redirect of Mr. Youngentob, and how many of our community
21 witnesses?

22 UNIDENTIFIED SPEAKER: None on the 27th.

23 MR. HARRIS: Oh, none. Oh, and I'm sorry. Both
24 of our expert witnesses if I didn't say that.

25 MS. ROBESON: The traffic.

1 MR. HARRIS: Yes. Traffic and the engineer, and
2 the civil engineer.

3 MS. ROBESON: And the civil.

4 MR. HARRIS: So that would take the morning maybe,
5 let's say, or two-thirds of the morning. My recommendation
6 then, if we all can agree, is to have as many of your
7 witnesses there who could speak then.

8 MS. SPIELBERG: I'll do my best. Some people have
9 already set aside the 30th and just like your people can't
10 come back on the 27th --

11 MR. HARRIS: Right.

12 MS. SPIELBERG: -- I can't promise you that --

13 MR. HARRIS: Right.

14 MS. SPIELBERG: -- these people can either. I
15 just -- the 30th was the date these people --

16 MR. HARRIS: Michael, are you going to be here,
17 are you going to be here on the --

18 UNIDENTIFIED SPEAKER: I expect to be here on the
19 27th and the 30th.

20 MR. HARRIS: Okay.

21 MS. ROBESON: Okay.

22 MS. SPIELBERG: So we'll try to get as many people
23 as we can.

24 MR. HARRIS: Fine. Okay.

25 MS. SPIELBERG: So that we --

1 MS. ROBESON: Okay. Then tentatively, what we'll
2 try to do on the 27th is Mr. Harris' two experts but Mr.
3 Youngentob's redirect. And then we, and we'll take those in
4 the morning. Then we will start on your community witnesses
5 if we could in the afternoon.

6 MS. SPIELBERG: In the -- so can you, just in
7 terms of people's scheduling, would that be like 1:00?
8 Would that be a fair statement?

9 MS. ROBESON: I, you know what? I can't promise
10 that. Generally, that may be but I'm not going to hold it
11 up if they can't get here.

12 MS. SPIELBERG: So by noon, is what we're --

13 MS. ROBESON: That's what I would suggest. Now,
14 that leaves for the 30th, that would leave your land planner
15 and possibly Ms. Cirillo, is that the name?

16 MS. SPIELBERG: Yes. I have to check her
17 schedule.

18 MS. ROBESON: Okay. Possibly Ms. Cirillo, and
19 then rebuttal. Am I missing anyone?

20 MR. HARRIS: No, but with --

21 MS. ROBESON: Oh, no.

22 MS. SPIELBERG: There are some people who were
23 told --

24 MR. HARRIS: Oh, yes.

25 MS. SPIELBERG: -- to come on the 30th is my

1 understanding because that's, so there will be a few people.

2 I can, you know, I can check --

3 MS. ROBESON: Well, the other option is I can go
4 late if you can make arrangements to go late.

5 MS. SPIELBERG: On the 30th? I'm sorry, on the --

6 MS. ROBESON: Or the 27th. Either one.

7 MS. SPIELBERG: If I can check with people, for
8 example, the traffic person, if I can see if she's available
9 on the 27th rather than the 30th but I just don't know.

10 MS. ROBESON: Okay.

11 MR. BROWN: We'll get a report back to you.

12 MS. ROBESON: Yes. Why don't you get me what you
13 can glean from your witnesses and, Mr. Harris, and you're
14 going to send a copy to Mr. Harris, correct?

15 MR. HARRIS: One other followup question that just
16 dawned on me, your land planner. We had originally planned
17 on him on the 30th but that was before we had a date on the
18 27th. Is there any likelihood that he would be available on
19 the 27th?

20 MR. BROWN: We don't know. He's in England.

21 MR. HARRIS: Oh, he's still out. Okay.

22 MS. ROBESON: Something to further explore when --

23 MR. HARRIS: Right.

24 MS. ROBESON: He's coming back on the 13th, right?

25 MR. BROWN: I think so.

1 MS. ROBESON: So we -- yes. So when he gets back,
2 we will do triage in the next couple of weeks and see if we
3 can't accommodate everyone, all right?

4 MR. HARRIS: Yes.

5 MR. BROWN: Very good.

6 MR. HARRIS: Thank you very much for --

7 MS. ROBESON: So you'll go, you'll send what you
8 can find out, trade information and see if we can't get more
9 predictability in the times that people will actually be
10 able to get on so they can reduce the, not having to be here
11 the entire time, all right?

12 MR. HARRIS: Okay. Well, I thank you for your
13 flexibility and I thank you, Anne and Dave too. We've had
14 two experts who sat here two days now and haven't gotten to
15 testify.

16 MS. ROBESON: Well, I realize that and --

17 MR. HARRIS: But everybody is trying to cooperate.

18 MS. ROBESON: -- it's costing money, so I
19 understand.

20 MR. HARRIS: Thank you.

21 MS. ROBESON: All right. With that, we're going
22 to continue the case to June 27th and June 30th at 9:30.
23 Thank you.

24 (Whereupon, at 6:17 p.m., the proceedings were
25 concluded.)

% Digitally signed by Josephine Hayes

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Chelsea School

Case No. G-892

By:

Josephine Hayes

Josephine Hayes, Transcriber